

441
No. 1490

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

FRANK WATERHOUSE & CO., Inc.,

Appellant,

vs.

GRENVILLE M. DODGE AND FRANK
WATERHOUSE,

Appellees.

TRANSCRIPT OF RECORD.

Upon Appeal from the United States Circuit Court
for the Western District of Washington,
Northern Division.

FILED

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*In the Circuit Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Inc., and
FRANK WATERHOUSE,

Respondents.

Order Extending Time to File Record.

Now, on this day, upon application of Bogle, Hardin & Spooner, attorneys for respondent, and for sufficient cause appearing, it is ordered that the time within which the clerk shall prepare, certify and transmit the record on appeal in this cause to the Circuit Court of Appeals, be, and the same is hereby, extended thirty days from this date.

C. H. HANFORD,

Judge.

Dated at Seattle, Washington, July 5, 1907.

[Endorsed]: Filed in the U. S. Circuit Court, Western Dist. of Washington. Jul. 5, 1907. A. Reeves Ayres, Clerk. W. D. Covington, Dep.

No. 1490. United States Circuit Court of Appeals, for the Ninth Circuit. Filed Jul. 29, 1907. F.

D. Monckton, Clerk. Re-filed Aug. 12, 1907. F. D.
Monckton, Clerk.

*In the Circuit Court of the United States, in and
for the Western District of Washington, North-
ern Division, Ninth Circuit.*

IN EQUITY—No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Incorporated (a
Corporation), FRANK WATERHOUSE,
Individually,

Defendants.

Bill of Complaint.

To the Honorable, the Judges of the Circuit Court
of the United States, for the Western District
of Washington.

Grenville M. Dodge of New York City, and a citi-
zen of the State of New York, brings this, his bill,
against Frank Waterhouse & Co., Incorporated, a
corporation organized under and by virtue of the
laws of the State of Washington, and a citizen of
the State of Washington, and Frank Waterhouse of

Seattle, Washington, a citizen of the State of Washington.

And thereupon your orator complains and says:

I.

That your orator is and was at the times hereinafter mentioned, a citizen of the State of New York, and resided and now resides in the city of New York, in the county and State of New York.

II.

That the defendant, the Frank Waterhouse & Co., Inc., is and was at the same time a corporation duly incorporated and existing under the laws of the State of Washington, and a citizen of the State of Washington, and that the defendant, Frank Waterhouse, is and was at the same time, a citizen of the State of Washington, and resided and now resides in the city of Seattle, State of Washington.

III.

That, in the month of February, 1904, the North Alaska Steamship Company, a corporation organized under and by virtue of the laws of the State of New York, entered into an agreement with the defendant, Frank Waterhouse & Co., Inc., to purchase of said defendant that certain steamship "Garonne," registered at Seattle, Washington, and of which steamer the said defendant was then the owner, for the sum of eighty-five thousand dollars

(\$85,000), payable partly in cash, and the balance in deferred payments.

IV.

That your orator further states that, in order to make the payments on said steamer "Garonne," the North Alaska Steamship Company, on or about May 13th, 1904, borrowed of said plaintiff a large sum of money, to wit: the sum of thirteen thousand five hundred dollars (\$13,500.00), the whole or the greater part of which was, as your orator is informed and believes, paid to said defendant, Frank Waterhouse & Co., Inc., as part payments on the purchase price of said steamer "Garonne," and for which sum said steamship company agreed in writing to give your orator a mortgage on said steamship.

V.

And your orator further states that on or about June 2, 1904, there was an accounting had at Seattle, Washington, between the said North Alaska Steamship Company and your orator, and also between said North Alaska Steamship Company and said defendant, Frank Waterhouse & Co., Inc., and that on said accounting it was found that the North Alaska Steamship Company was indebted to your orator in the sum of ten thousand dollars (\$10,000.00), being the balance due to the plaintiff on the money loaned as aforesaid, and that said North Alaska Steamship Company was also indebted to

said defendant, Frank Waterhouse & Co., Inc., in the sum of thirty-seven thousand and six hundred seventy-one and 46/100 dollars (\$37,671.46), being the balance due said defendant on the purchase price of said steamer "Garonne."

VI.

And your orator further states that on or about June 2, 1904, said steamer "Garonne" was at the port of Seattle in the possession of the North Alaska Steamship Company under the contract of sale above mentioned, still registered in the name of the defendant, Frank Waterhouse & Co., Inc., loaded and equipped and ready to sail for the north and that at said time one Frank S. Pusey, who was the agent of and was acting for your orator, was present at said Seattle for the purpose of securing the indebtedness from the North Alaska Steamship Company to your orator, which was then due and payable, by appropriate legal proceedings against said steamer "Garonne," and against the North Alaska Steamship Company, to restrain and prevent said steamer from proceeding to the north, and to attach or libel said steamer for said indebtedness to your orator, as your orator had a right to do under the laws and practice of the State of Washington, and under the laws and practice of the United States, relating to its admiralty jurisdiction; but that at the request of said defendants, Frank Waterhouse &

Co., Inc., and Frank Waterhouse, and upon the agreement hereinafter set forth and relying upon such agreement, your orator took no action against said steamship, or against the North Alaska Steamship Company, whereby he lost the security which he could have then obtained, and entered into the following written agreement with the said defendant, Frank Waterhouse & Co., Inc., which agreement is as follows:

“Memorandum, between Frank S. Pusey, agent for G. M. Dodge, of New York, and Frank Waterhouse & Co., Inc., of Seattle, Washington.

The North Alaska Steamship Company is indebted to said Waterhouse & Co., Inc., in the sum of about thirty-seven thousand six hundred seventy-one and $\frac{46}{100}$ dollars (\$37,671.46/100), being the balance due on the purchase price of the steamship ‘Garonne,’ and are also indebted to said G. M. Dodge in the sum of about ten thousand dollars for borrowed money.

It is agreed that said Waterhouse & Co., Inc., shall take a mortgage from said North Alaska Steamship Company upon the Steamship ‘Garonne,’ to secure both claims above mentioned. The claim of said Waterhouse & Co., Inc., shall be prior and paramount under such mortgages, and the claim of said Dodge shall be secondary. Said Waterhouse & Co., Inc., shall take a note from said North Alaska Steam-

ship Company, payable to them as trustee for the amount so owing to said Dodge, said note to be payable in two months from date.

It is agreed that said Waterhouse & Co., Inc., in acting as such trustee for said Dodge in the securing of said indebtedness, assumes no liability whatever with reference thereto, except that it agrees to act in good faith.

FRANK S. PUSEY, Agent,

For G. M. DODGE.

FRANK WATERHOUSE & CO., Inc.,

By FRANK WATERHOUSE, President.”

And that also, on said June 2d, 1904, said North Alaska Steamship Company delivered to said defendant, Frank Waterhouse & Co., Incorporated, as trustee for your orator, its promissory note in words and figures following, to wit:

“\$10,000.00 Seattle, Wash., June 2d, 1904.

On or before two months after date, we promise to pay to the order of Frank Waterhouse & Co., Inc., as trustee, the sum of ten thousand and 00/100 dollars, with interest at the rate of seven per cent per annum from date. Negotiable and payable at the Seattle National Bank, Seattle, Wash. If suit is brought on this note or it becomes advisable to place the same in the hands of an attorney for collection, we agree to pay an additional sum equal to five per

cent upon the amount of this note as an attorney's fee.

NORTH ALASKA STEAMSHIP COMPANY,

By CHARLES B. SMITH,

President."

VII.

And your orator further states that said defendant, Frank Waterhouse & Co., Inc., failed to carry out the trust on their part to be performed under and pursuant to said trust agreement, and failed and neglected to protect your orator in the premises, and failed to take a mortgage from said North Alaska Steamship Company; but, contrary to the said trust assumed by us, it retained the title to said steamship "Garonne," and, notwithstanding that the retention of the title of said steamship under said trust agreement was in legal effect a holding as trustee for the benefit of themselves and your orator, said defendants, Frank Waterhouse & Co., Inc., and Frank Waterhouse, without notice to your orator, and without his knowledge, obtained the possession of said steamship "Garonne" from said North Alaska Steamship Company sometime in June or July, 1904, and thereafter without notice to your orator, and without his knowledge or consent, and without any consideration for the rights of your orator or of the terms of said trust agreement, or of the duties of said defendant, Frank Waterhouse & Co., Inc.,

as such trustee, and in violation thereof and in bad faith, and for the purpose of injuring your orator, sold or attempted to sell the said steamship "Garonne" to the defendant, the Merchants' and Miners' Steamship Company, a corporation organized under and by virtue of the laws of the State of New York, in which company, as your orator is informed, the defendant, Frank Waterhouse, the president of the defendant Frank Waterhouse & Co., Inc., was interested as a promoter and stockholder, from which sale both the defendants Waterhouse & Co., Inc., and Frank Waterhouse secured or attempted to secure to themselves profits and advantages to the injury of your orator and in defiance of his rights.

VIII.

And your orator further states that said North Alaska Steamship Company has not paid the amount of its note aforesaid for ten thousand dollars (\$10,000.00), or any part thereof to your orator, and that your orator has not received said sum or any part thereof from any source whatsoever.

IX.

And your orator further states that said steamer "Garonne," on June 2d, 1904, was in first-class condition, thoroughly seaworthy, having been repaired and put in first-class condition shortly prior to that time at an expense of over twenty-five thousand dol-

lars (\$25,000.00), and that when said steamer "Garonne" was turned over by the North Alaska Steamship Company to said defendant, Frank Waterhouse & Co., Inc., or Frank Waterhouse, she was still in first-class condition and thoroughly seaworthy, and worth upward of one hundred thousand dollars (\$100,000.00), and was worth much more than sufficient to pay all claims against her, including the claim of your orator for ten thousand dollars (\$10,000.00) as herein set forth, and that said steamer "Garonne" was at the time of sale or pretended sale by the defendant, Frank Waterhouse & Co., Inc., or Frank Waterhouse, to the Merchants' & Miners' Steamship Company worth upward of one hundred thousand dollars (\$100,000.00).

X.

And your orator further states that he did not learn that said steamer "Garonne" had been delivered to said defendant, Frank Waterhouse & Co., Inc., or Frank Waterhouse, and that said defendant had sold or attempted to sell the same to said Merchants' and Miners' Steamship Company until on or after the 19th day of August, 1904, and that your orator then demanded of said defendants Frank Waterhouse & Co., Inc., and Frank Waterhouse, an accounting as trustee under said trust agreement and for the payment to him of the ten thousand dol-

lars (\$10,000.00) due him as aforesaid with interest, but that said defendants Frank Waterhouse & Co., Inc., have and each of them has failed and refused and still fail and refuse to render any such accounting, or to in any way account to your orator under said trust agreement or otherwise, and simply denies that your orator has any rights whatsoever in the premises.

XI.

And your orator further says that he is ignorant of all matters connected with the sale of the steamship "Garonne" to the Merchants' & Miners' Steamship Company, and that he is ignorant as to whether there has been an actual sale of said steamship or not, or if so, whether the purchase price of said steamship was a fair and reasonable one; and that the defendant Frank Waterhouse, is made a party defendant for the reason that it was through him and relying upon his representations and assurances that your orator entered into said contract with Frank Waterhouse & Co., Inc., of which he then was and still is president, and that, as your orator is informed, he owns a controlling or large interest in said Frank Waterhouse & Co., Inc., and in the Merchants' & Miners' Steamship Company, and that he personally carried through the transactions for and the sale of the said steamer "Garonne" to said Merchants' & Miners' Steamship Co., and personally

obtained a large profit or advantage therefrom, and in many ways, the full knowledge of your orator's rights under said contract, and in bad faith and with fraudulent intent, worked and acted to the injury and damage of your orator as aforesaid.

XII.

That the matter in dispute in this action, exclusive of interest and costs, exceeds in value the sum of two thousand dollars (\$2,000.00).

To the end therefore that your orator may have that relief which he can only obtain in a court of equity, and inasmuch as your orator is remediless in the premises at and by the strict rules of the common law, and is only remediable in a court of equity, where matters of this kind are properly cognizable and reviewable; and that the defendants, Frank Waterhouse & Co., Inc., Frank Waterhouse, and each of them shall truly make answer according to the best of the knowledge, information and belief of each of them, to all and singular the matters and charges aforesaid, your orator hereby waiving pursuant to the statutes, the necessity of the answer of either of the said defendants being put in under the oath of such defendant, and that as full and particular in every respect as if the same were here again repeated, and he thereunto particularly interrogated.

And that an account be taken of all the acts and transactions of said Frank Waterhouse & Co., Inc., as trustee as aforesaid, touching or in any wise appertaining to the matters hereinbefore set forth, and particularly of all sums of money and other property of whatsoever kind or nature that has come into the hands of or been received by the said defendant, or any of its officers, agents or employees, for its use or benefit or in its behalf, by reason of the sale of the steamer "Garonne," and of the value of any and all property so received other than money; and that the said defendant be decreed to pay and deliver to your orator whatever shall thereupon be found due him from the said defendant; or that this Court impress the terms of said trust agreement upon the said proceeds, and proceed to administer said trust for the protection of your orator.

And, if it should appear upon said accounting that the defendant, Frank Waterhouse, has personally obtained any profit or advantage from the sale of said steamer "Garonne," then that your orator have similar relief against him.

And, if it should appear upon said accounting that your orator has been injured and has suffered damage by reason of the neglect, default or failure of the defendant Frank Waterhouse & Co., Inc., to observe and perform in good faith its said contract with your orator, or by reason of any wrongful act or acts

of either of the defendants, then that such defendant or defendants shall be decreed to pay to your orator the amount of such damage.

And that your orator shall recover of said defendant or defendants his costs in this behalf incurred, and also such sum as this Court may deem reasonable as an attorney's fee.

And that your orator have such other and further relief in the premises as the nature of the case shall require and shall be agreeable to equity and good conscience.

May it please your Honors to grant unto your orator a writ of subpoena issued by and under the seal of this Honorable Court and directed to said defendants, Frank Waterhouse & Co., Inc., and Frank Waterhouse, commanding them and each of them on a certain date and under a certain penalty in said writ to be stated, personally to appear before your Honors in this Honorable Court, and then and there full, true and perfect answers make to all and singular the premises, and further to stand and perform and abide such further orders, direction and decree herein as to your honors shall seem meet, and shall be agreeable to equity and good conscience.

And your orator will ever pray.

GEO. H. KING,
Solicitor for the Complainant.

United States of America,
State of Washington,
County of King,—ss.

George H. King, being first duly sworn, on his oath deposes and says that he is the solicitor for the plaintiff in the above-entitled action; that the plaintiff does not reside and is not now within the State of Washington or the District of Washington; that affiant is familiar with the matters and things alleged in the foregoing bill, and he therefore verifies this bill for and on behalf of the said plaintiff, and he further states that the allegations and averments set forth in the foregoing bill are true, except those made upon information and belief, and that those made upon information and belief are true as he verily believes.

GEO. H. KING,

Subscribed and sworn to before me this 26th day of April, 1905.

[Seal]

H. P. CLISE,

Notary Public in and for the State of Washington,
Residing at Seattle, in said State.

Service of all subsequent papers in this action except writs and process, may be made at the office of the undersigned, at Room 401, Globe Block, Cor-

ner First Avenue & Madison St., Seattle, King
County, Washington.

GEORGE H. KING,
Solicitor for Plaintiff.

[Endorsed]: Bill In Equity for an Accounting.
Filed in the U. S. Circuit Court, Western Dist. of
Washington, April 26, 1905. A. Reeves Ayres,
Clerk. By A. N. Moore, Deputy.

*In the United States Circuit Court, for the Western
District of Washington, Northern Division.*

No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE AND COMPANY, INC
(a Corporation), and FRANK WATER-
HOUSE,

Defendants.

Answer.

These respondents, Frank Waterhouse and Com-
pany, Inc., and Frank Waterhouse, answering so
much and such parts of said bill of complaint as they
are advised it is material or necessary for them to
answer unto, say:

I.

They admit upon information and belief that said

complainant is a citizen and resident of the State of New York.

II.

They admit that respondent Frank Waterhouse and Company, Inc., is a corporation organized under the general laws of the State of Washington, and a citizen of said State; and that Frank Waterhouse is a citizen and resident of said State.

III.

They admit that the North Alaska Steamship Company, a corporation organized under the laws of the State of New York, entered into an agreement with respondent company to purchase the steamship "Garonne" for the sum of eighty-five thousand (\$85,000.) Respondents show that said agreement was negotiated by one W. H. Ferguson for and on behalf of the North Alaska Steamship Company on or about February 3d, 1904, terms and conditions thereof being as follows: \$1,000 in cash, which was paid on the day said contract was entered into; \$14,000 to be paid on or before February 15th, 1904; and the remaining \$70,000 to be evidenced by the notes of North Alaska Steamship Co. payable as follows: \$10,000 March 10th, 1904; \$10,000, June 15th, 1904; \$5,000, September 15th, 1904; \$5,000, November 15th, 1904; \$5,000, February 15th, 1905; \$5,000, April 15th, 1905; \$5,000, June 15th, 1905; \$5,000, August 15th, 1905; \$5,000, October 15th, 1905;

\$10,000, December 15th, 1905; and \$5,000, March 15th, 1906; said deferred payments to be secured by first mortgage on said steamship together with an assignment of marine insurance thereon to the full amount of such deferred payment and a satisfactory guarantee that said steamship would at all times be kept free and clear of all claims or incumbrances until said indebtedness was paid in full, and said deferred notes to be further secured by collateral security satisfactory to said Frank Waterhouse and Company, Inc.; said vessel was to be conveyed to said North Alaska Steamship Company upon the payment of said \$14,000 on February 15th, 1904, and the execution of said notes and the furnishing of the security therefor as hereinabove stated.

IV.

Respondents have been informed that said North Alaska Steamship Company borrowed some money from said complainant, but they have no certain knowledge thereof and call for strict proof in so far as same may be material to their interest. Respondents do not know nor have they any information sufficient to enable them to form a belief whether any of the money that may have been so borrowed by said North Alaska Steamship Company from said complainant was paid on the purchase price of said steamer, and they call for strict proof thereof.

Respondents further state that various sundry payments were made by said North Alaska Steamship Company to respondent company on said contract of purchase, and that all said payments were made in the name of said North Alaska Steamship Company and without any notice or knowledge upon the part of these respondents of the source from which said North Alaska Steamship Company obtained the money to make such payments. Upon information and belief respondents deny that said North Alaska Steamship Company agreed to give a mortgage to said complainant upon said vessel.

V.

Answering the allegations in paragraph V of said bill of complaint, respondents state:

That said North Alaska Steamship Company did not comply with the terms of said contract of purchase. That it paid to respondent company said sum of one thousand dollars (\$1,000) on February 3d, 1904, but defaulted in the payment due on February 15th, 1904, and fell behind on all the payments subsequently accruing thereon up to June 2d, 1904. That said North Alaska Steamship Company soon after entering into said contract, desired to make certain alterations and repairs upon said steamship, and applied to this respondent company for permission to take such possession of said steamer as was necessary in order to make such repairs; that

this respondent did give partial possession for that purpose, upon the express agreement upon the part of said North Alaska Steamship Company that no indebtedness would be incurred against said steamer, and that said company would at all times keep funds in the hands of this respondent company amply sufficient to pay off all material and labor claims and other debts incurred by said North Alaska Steamship Company in repairing said steamer and fitting and provisioning her for the season's business. Respondents show and state that they called upon said North Alaska Steamship Company at various and sundry times between February 3d and June 2d, 1904, to perform its agreement by making the payments due under the terms of said contract and furnishing the security for the deferred payments as therein provided, and also to furnish funds with which to pay the claims incurred against said steamer by said North Alaska Steamship Company in said repairs and for supplies ordered by said company for said steamer, but that said North Alaska Steamship Company failed to comply with said demands and induced respondent company to postpone a definite cancellation of said contract for breach thereof by repeated promises of performance within a few days. That on June 2d, 1904, there was a balance due respondent company on said purchase price

from said North Alaska Steamship Company of \$37,671.46; that said steamer was loaded with cargo and passengers ready to start on her voyage to Nome, Alaska; that the representative of said North Alaska Steamship Company reported to respondent company that there were claims unpaid against said steamer for repairs and supplies amounting to approximately thirteen thousand dollars (\$13,000). That said North Alaska Steamship Company had failed to furnish a guarantee bond guaranteeing said vessel would be kept free of liens and they had failed to furnish the collateral security for said deferred payments according to the terms of their contract, and stated to respondent that they were unable to furnish such security; and respondent company had notified them that said vessel would not be permitted to sail under their charge until said contract was complied with in full. That on or about June 1st, 1904, one Charles B. Smith, president of said North Alaska Steamship Company, arrived in Seattle from New York expecting to go to Nome, Alaska, on said steamer, and one Frank S. Pusey, representing himself as the agent of said complainant, also arrived in Seattle about the same date. That said Smith represented to respondents that his company was prepared to pay off all the claims against said vessel incurred by repairs and supplies as soon as he could notify the New York

office of the amount due therefor; and that they were prepared to pay the balance due respondent company on the purchase price within the next twenty days; and in view of said representations and replying thereon, this respondent company consented to permit said steamer to make said voyage in charge of said North Alaska Steamship Company; that said Smith and said Pusey agreed that said North Alaska Steamship Company was indebted to said complainant in the sum of ten thousand dollars (\$10,000), and said Smith, on behalf of his said company, offered to take a bill of sale to said steamer and to execute a mortgage thereon for the balance due respondent company, payable in twenty (20) and forty (40) days from that date, and to give a second mortgage to said complainant to secure the ten thousand dollars (\$10,000) due him payable in sixty (60) days from that date; said bill of sale and mortgages to be executed by said company as soon as the money was received by respondent company with which to pay the claims for labor and supplies against said steamer; that said Smith also agreed with said Pusey to assign to him, and on behalf of said North Alaska Steamship Company did assign to said Pusey certain freight due on cargo then being shipped by said steamer to Nome, which was payable on delivery of the cargo at Nome, and said Pusey appointed said

Smith as agent to collect said freight and remit them to the Seattle National Bank for the credit of said complainant. That as a matter of convenience it was agreed between the said Pusey and the said respondent company that one mortgage would be taken on said vessel securing both claims due said respondent company and due said complainant, said mortgage providing for priority in favor of the debt due respondent company; that said Pusey stated to respondent that he did not wish to remain in Seattle for the length of time necessary to get said mortgage executed by said North Alaska Steamship Company, and requested respondent company to act for him in receiving such money as might be remitted by said Smith to said Seattle National Bank for the credit of complainant, and in the acceptance and recording of said mortgage; and the respondent company as a matter of accommodation to said Pusey consented to do so, and the memorandum set forth in the sixth paragraph of said bill of complaint was executed to evidence said arrangement.

Respondent further shows that it was agreed that the note to said complainant should be executed by said North Alaska Steamship Company payable to this respondent company as trustee for said complainant in order that the same might be deposited in the Seattle National Bank and any remittances received by said bank from said Smith could be credited thereon.

VI.

Respondents deny that said Pusey was prevented by them from resorting to any legal proceedings against either said steamer or said North Alaska Steamship Company; on the contrary, they were advised that said complainant had no lien of any kind against said steamer and could not maintain any libel or other action to subject said vessel to his claim. The title to said steamer was in this respondent company, and said North Alaska Steamship Company had defaulted in its contract of purchase and was unable to perform the same at that time; and this respondent company was contemplating declaring said contract forfeited on account of such failure, and was induced to forego doing so by the representations of said Smith that said liens and debts would be paid off in full at once and the balance of the purchase price paid within a short time. Respondent states that in the transactions and conversations with said Pusey leading up to said final arrangement the said Pusey was distinctly informed of the rights of this respondent and the conditions as they existed at that time between it and said North Alaska Steamship Company, and said Pusey at all times recognized the rights of this respondent to full payment before the said North Alaska Steamship Company would be entitled to any interest or property in said steamer.

VII.

Replying to the allegations contained in paragraph VII of the bill of complaint, respondents say they deny that they failed to perform any trust on their part to be performed under the arrangement herein set out, and they deny that they failed and neglected to do anything they were required to do to protect said complainant in the premises.

Respondents state that said North Alaska Steamship Company was a New York corporation, and had its main office and corporate seal in the State of New York, and that all of its officers except said Charles B. Smith, who was president, were then in New York. That respondent company caused to be prepared a bill of sale of said steamer from respondent company to said North Alaska Steamship Company, and also caused to be prepared a mortgage from said North Alaska Steamship Company to respondent company upon said steamer with appropriate conditions and provisions to secure the debts due this respondent company and also that due complainant in accordance with the terms agreed on. That said mortgage was submitted to said Pusey and declared by him to be satisfactory in form; that thereupon respondent company procured said Charles B. Smith, president of said North Alaska Steamship Company, to sign said mortgage for and on behalf of said company, and also to ex-

ecute the notes upon behalf of said company. That respondent company was advised by its own counsel, and by said Pusey, that said Smith as president could not execute said mortgage and that it was necessary that the same should be forwarded to New York to complete the execution thereof by the signature of the secretary under the seal of the corporation and to have the same approved by the Board of Directors of said company. That accordingly this respondent company on June 3d, 1904, enclosed said bill of sale and said mortgage to the Chase National Bank of New York with directions to said bank to deliver said bill of sale to said North Alaska Steamship Company upon the proper execution of said mortgage by that company; and on the same day respondent company notified J. B. Leake, the secretary of said company, and also the Occidental Security Company, the financial agent of said company in New York, of the forwarding of said papers and requested prompt execution thereof. That said North Alaska Steamship Company failed and refused to execute said mortgage and refused to pay the claims incurred by it against said steamship company for repairs and supplies. That respondent company upon a thorough investigation ascertained that there were bills outstanding against said steamship, which were liens thereon, for repairs made and supplies furnished to said steam-

ship by said North Alaska Steamship Company amounting in the aggregate to approximately thirty-five thousand dollars (\$35,000) instead of thirteen thousand dollars (\$13,000) as had been represented to this respondent by the officers of said company. That respondent company thereupon demanded of said North Alaska Steamship Company that it at once pay off said claims and execute said mortgage or otherwise comply with the terms of said contract of purchase, and said North Alaska Steamship Company confessed its inability to do so and voluntarily abandoned said contract and relinquished and released to said respondent company all right under said contract of purchase and surrendered said steamship to said respondent company. That said respondent company thereafter sold said steamship to the Merchants' and Miners' Steamship Company of New York.

Respondents further show that at the time said North Alaska Steamship Company declared its inability to carry out said contract and offered to release said steamer to respondent company, these respondents endeavored to get into communication with said complainant in order to notify him of the position taken by said North Alaska Steamship Company, but that they were informed that said complainant was abroad and they were unable to get into communication with him. That said claims

against said steamship for repairs and supplies were then due and the payments thereof were being pressed against this respondent company and respondent was compelled to take immediate action in order to protect his own interest.

Respondents deny the allegations in said bill of complaint that it failed to carry out said alleged trust upon its part or that it failed and neglected to protect the interest of said complainant in so far as it was able to do so, and it shows that said mortgage was not executed because of the refusal of the said North Alaska Steamship Company to execute the same. Respondents deny that they have in any way violated any trust assumed by said respondent company to said complainant and they deny that they or either of them have in any of the matters referred to acted in bad faith toward said complainant. They show and state that when said North Alaska Steamship Company failed and refused to carry out its said contract of purchase and refused to furnish money to pay off the bills and claims incurred against said steamship and released and relinquished its right to purchase said steamship under said contract, this respondent company found itself in possession of said steamship with an indebtedness of approximately thirty-five thousand dollars (\$35,000) thereon, which was immediately due and payable. That in order to raise the money

to pay said claims this respondent company agreed to and did sell and convey said steamship to the Merchants' and Miners' Steamship Company of New York, receiving from said company the sum of thirty thousand dollars (\$30,000) in cash, with which this respondent company paid the liens against said steamship to that amount, and taking stock in said Merchants' and Miners' Steamship Company for the remaining interest of this respondent company in said steamer.

Respondents deny that either of them received any profits whatever from said sale and they deny that respondent Frank Waterhouse received any promoter's interest or acquired any stock whatever or any profits or advantages from said sale. Respondents show that said sale to Merchants' and Miners' Steamship Company was made in perfect good faith and as the only means open to the respondent company to raise the funds to pay off and discharge the liens against said steamship incurred by said North Alaska Steamship Company.

VIII.

Respondents have no knowledge or information sufficient to form a belief as to whether said North Alaska Steamship Company has paid its indebtedness to said complainant or not.

IX.

Respondents state in answer to allegations con-

tained in the ninth paragraph of said bill of complaint that said steamship "Garonne" on June 2d, 1904, was in first-class condition and respondent believes that she was thoroughly seaworthy, and they state that the overhauling and repairs made thereon by said North Alaska Steamship Company were charged and done on the credit of this steamer, and that this respondent company was compelled to pay the bills therefor.

Respondents deny that said steamship at the time said North Alaska Steamship Company abandoned its contract of purchase was worth one hundred thousand dollars (\$100,000), or that she could have been sold for that sum. Respondents in that connection state that they had been endeavoring to sell said steamship for several years and that they endeavored to sell her at the time said North Alaska Steamship Company abandoned its contract, and that the best price that could be obtained therefor was the sum of sixty-seven thousand dollars (\$67,000), being the balance due this respondent company and sufficient cash to pay said liens and claims.

X.

Respondents show that as soon after said transactions as they obtained the address of said complainant they notified him of the actions that has been taken in the premises, and returned to him the said note which has been signed by said Charles B.

Smith for said North Alaska Steamship Company payable to said complainant. They deny that said complainant is entitled to any accounting from the respondent company or either of them, and they deny that the respondents or either of them are indebted to said complainant in any sum whatever.

XI.

Respondents deny that said complainant entered into any arrangement with the North Alaska Steamship Company, or with the respondent company upon or through or relying upon any representation of the respondent, Frank Waterhouse. They admit that said respondent, Frank Waterhouse, owns a controlling interest in Frank Waterhouse and Company, Inc., but they deny that he owns any stock whatever in said Merchants' and Miners' Steamship Company; and they deny that he obtained any profits or advantages from the sale of said steamer "Garonne" to said Merchants' and Miners' Steamship Company; and they deny that either of said respondents in any way whatever worked or acted in bad faith or with fraudulent intent to injure or damage said complainant. On the contrary, respondents state that in all of said transactions they did endeavor to protect the debt due said complainant in so far as they were able to do so without sacrificing the prior claim and interest of the respondent company.

Now having fully answered, respondents ask that said bill of complaint be dismissed and that they go hence without day.

W. H. BOGLE,
Solicitor for Respondents.

State of Washington,
County of King,—ss.

Before the undersigned authority in and for said state and county, Frank Waterhouse this day makes oath that he is one of the respondents named in the foregoing answer; that he has read said answer and knows the contents thereof; that the matters and things therein stated as of the knowledge of respondents are true, and those things stated upon information and belief he verily believes to be true.

FRANK WATERHOUSE.

Sworn to and subscribed before me this 3d day of May, 1905.

[Seal] JAMES P. TOWNSEND,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Answer. Filed in the U. S. Circuit Court, Western Dist. of Washington, May 3, 1905. A. Reeves, Clerk. A. N. Moore, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, Northern
Division.*

No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Inc. (a Corpora-
tion), and FRANK WATERHOUSE,

Defendants.

Exceptions to Answer.

Exceptions taken by the said complainant to the joint answer of the defendants, Frank Waterhouse & Co., and Frank Waterhouse, to complainant's bill of complaint.

1st. For that so much of paragraph III of said answer as commences at the words: "Respondents show that said agreement," etc., on page 1 of said answer, line 32, down to the end of said paragraph III, is irrelevant and immaterial, and contains no defense to the complainant's allegations, and is insufficient.

2d. For that so much of paragraph V of said answer as commences at the words: "That said North Alaska Steamship Company did not comply," etc.,

on page 3 of said answer, line 15, down to the words: "by repeated promises of performance within a few days," on page 4 of said answer, line 13, is irrelevant and immaterial, and does not bear at all on the issues involved in this suit, and is insufficient and contains no defense to the complainant's allegations.

3d. For that the details and allegations contained in paragraph VII of said answer are insufficient as a defense to the allegations contained in complainant's bill of complaint in this: That the denials contained in said paragraph VII, and each of them, are mere conclusions of law; and that the affirmative allegations therein contained are irrelevant, insufficient, sham and evasive, and contain no defense to the complainant's allegations; that the number of shares of stock of the Merchants' and Miners' Steamship Company, of New York, alleged to have been received in payment for said steamer "Garonne," and the value of said shares is not set forth; and that it does not appear therein that defendants endeavored to sell said steamer for any other or better price or terms than that alleged to have been offered by said Miners' and Merchants' Steamship Company.

4th. For that so much of paragraph IX of said answer as commences at the words: "Respondents in that connection state," etc., on page 11 of said

answer, line 2, down to the end of said paragraph IX are sham, insufficient and evasive.

5th. For that so much of paragraph X of said answer as is contained in the first six lines thereof, down to and including the words: "payable to said complainant," on page 11 of said answer, line 16, is irrelevant, immaterial and insufficient, and does not bear on the issues involved in this suit.

Wherefore the complainant comes, and in all particulars aforesaid excepts to the answer of said defendants, on the grounds alleged, that the same is evasive, imperfect, insufficient, irrelevant and immaterial and humbly prays that said defendants may be compelled to put in a full, true, complete and sufficient answer thereto, and particularly that said defendants be required to set out a full and true accounting of the alleged sale of said steamer "Garonne" to said Merchants' & Miners' Steamship Company, and the true character and value of the consideration received therefor, and that he have such other relief in the premises as to the Court may seem proper.

G. W. KING,

Solicitor for Complainant.

Service of the within exceptions, by delivery of a copy to the undersigned is hereby acknowledged this 26th day of May, 1905.

W. H. BOGLE,

Attorney for Defendant.

[Endorsed]: Exceptions to Answer. Filed in the U. S. Circuit Court, Western Dist. of Washington, May 26, 1905. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

*In the Circuit Court of the United States in and for
the Western District of Washington, Northern
Division, Ninth Circuit.*

IN EQUITY—No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Incorporated (a
Corporation), FRANK WATERHOUSE,
individually,

Defendants.

Order Overruling Exceptions to Answer.

The exceptions of the complainant to the answer filed herein, coming on this day to be heard; the same being fully considered, it is ordered by the Court that said exceptions be, and they are hereby, overruled.

C. H. HANFORD,

Judge.

Dated this 29th day of May, 1905.

[Endorsed]: Order. Filed in the U. S. Circuit Court, Western Dist. of Washington. May 29, 1905. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

United States Circuit Court, Western District of Washington, Northern Division.

No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Inc, et al.,

Defendants.

Memorandum Decision on Exceptions to Answer.

(Filed July 6, 1905.)

An answer under oath having been waived, exceptions for insufficiency and for impertinence cannot be taken to part of an answer, and for that reason the exceptions in this case will be overruled.

At the final hearing the Court will disregard immaterial issues, if any are raised by the answer, and the defendants will be taxed with costs and all expenses occasioned by such immaterial matter.

C. H. HANFORD,

Judge.

[Endorsed]: Memorandum Decision on Exceptions to Answer. Filed in the U. S. Circuit Court,

Western Dist. of Washington. July 6, 1905. A.
Reeves Ayres, Clerk. H. M. Walthew, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision, Ninth Circuit.*

IN EQUITY—No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Inc., and
FRANK WATERHOUSE, individually,
Defendants.

Order Overruling Exceptions to Answer, etc.

On hearing complainant's exceptions to defend-
ants' answer, in the above-entitled proceeding, it is
hereby

Ordered: That said exceptions be, and the same
hereby are overruled, and that said complainant have
until the next succeeding rule day in this court to file
amendments to his bill, without costs, or to file a
general replication to said answer, as he may elect.

To that portion of the above order overruling
complainant's exceptions to the answer, complain-
ant, by counsel, excepts, and his exception is allowed.

C. H. HANFORD,

Judge.

Seattle, Washington, July 12th, 1905.

[Endorsed]: Order. Filed in the U. S. Circuit Court, Western Dist. of Washington, Jul. 12, 1905. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

In the Circuit Court of the United States, in and for the Western District of Washington, Northern Division, Ninth Circuit.

IN EQUITY—No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Incorporated (a Corporation), FRANK WATERHOUSE, Individually,

Defendants.

Replication.

To the Honorable, the Judges of the Circuit Court of the United States, for the Western District of Washington.

The replicant, Grenville M. Dodge, saving and reserving to himself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendants, Frank Waterhouse & Co., Incorporated, a corporation, and Frank Waterhouse, individually, for replication thereunto saith

that he doth and will aver, maintain, and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things this replicant is ready to aver, maintain, and prove as this Honorable Court shall direct and humbly prays as in and by his said bill he hath already prayed.

G. W. KING,

Solicitor for Complainant.

United States of America,
State of Washington,
County of King,—ss.

Geo. H. King, being first duly sworn, upon his oath deposes and says: that he is the solicitor for the complainant in the above-entitled action; that said complainant does not reside and is not now within the State of Washington or the Western District of Washington; that affiant is familiar with the matters and things alleged in the foregoing replication and he therefore verifies said replication for and

on behalf of said complainant; and he further states that the allegations and averments set forth in said replication are true, except those made upon information and belief, and that those made upon information and belief are true as he verily believes.

GEO. H. KING.

Subscribed and sworn to before me this 2d day of Aug., 1905.

[Seal]

H. R. CLISE,

Notary Public in and for the State of Washington,
Residing at Seattle, Washington.

Service of the within replication by delivery of a copy to the undersigned is hereby acknowledged this 2d day of August, 1905.

W. H. BOGLE.

Per R. J. B.,

Attorney for Defendants.

[Endorsed]: Replication. Filed in the U. S. Circuit Court, Western Dist. of Washington. Aug. 2, 1905. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

*In the Circuit Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & COMPANY, Incor-
porated, and FRANK WATERHOUSE,
Defendants.

Stipulation to Take Testimony of Frank S. Pusey.

It is hereby stipulated by and between the parties hereto that the deposition of Frank S. Pusey, a witness on behalf of the complainant, may be taken in rebuttal before Willis Von Valkenburgh, special examiner, at 415 Williams Street, New York City, upon the interrogatories hereto attached, and when so taken may be used at the hearing of said cause, subject to the same objections (except only to the form of the interrogatories), as to competency, rele-

vancy and materiality of the testimony as if said witness was personally present and testifying.

GEO. H. KING,
Solicitor for Complainant.
W. H. BOGLE,
Solicitor for Defendants.

*In the Circuit Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

No. 1290.

GRENVILLE M. DODGE,
Complainant,

vs.

FRANK WATERHOUSE & COMPANY, Incorporated,
and FRANK WATERHOUSE,
Defendants.

Direct Interrogatories to Frank S. Pusey.

Deposition of Frank S. Pusey.

Int. 1. Are you the same Frank S. Pusey who formerly testified in this action in New York on September 29, 1905?

Int. 2. I call your attention to a statement contained on page 12, lines 28, 29 and 30, and page 13, lines 1, 2 and 3 of the testimony of Frank Waterhouse for the defense in this action, in which Mr. Waterhouse says: "Mr. Pusey then dropped or dis-

(Deposition of Frank S. Pusey.)

continued his attempts to persuade me to recognize the above-mentioned agreement and asked my cooperation in helping him to obtain payment or satisfactory security for the loan of General Dodge to Mr. Smith," and would ask you if that statement is correct?

Int. 3. If you answer that this statement is not correct then state in what respect it is incorrect, and what actually took place in reference to said agreement at that interview between yourself and Mr. Waterhouse?

Int. 4. I call your attention to the statement on page 13 of the testimony of Frank Waterhouse for the defense in this proceeding to the effect that at the interview in Seattle between Frank Waterhouse, Mr. Charles B. Smith and yourself, therein testified to, whether or not Mr. Smith stated to Mr. Waterhouse in your presence or to your knowledge that the indebtedness due General Dodge, and which you were trying to have paid or secured, was an individual obligation of said Charles B. Smith, and not an obligation of the North Alaska Steamship Company?

Int. 5. State to the best of your knowledge and recollection what was said at that interview by Mr. Smith in reference to that indebtedness?

(Deposition of Frank S. Pusey.)

Int. 6. I call your attention to a statement contained in the testimony of Mr. Frank Waterhouse for the defense in this action on page 16, lines 17 to 21, as follows: "And he (meaning yourself) asked me (meaning Mr. Waterhouse) solely as a matter of accommodation, if I would act in the capacity of attending to General Dodge's interests in securing the completion of this agreement if possible, and the proper carrying of it out," and ask if the same is correct?

In. 7. If you answer that it is not correct, then state to the best of your knowledge and recollection what was said by you at that time on that subject?

Int. 8. State whether or not as the interview between Mr. Waterhouse, Mr. Bogle and yourself in Seattle on or about May 31, 1904, or at any time, you ever knew or heard of the Mr. Hastings mentioned in Mr. Bogle's testimony.

Int. 9. State what, if any thing, was said to you and what data or memorandum if any was shown to you at said interview in reference to the expenses of the North Alaska Steamship Company, or the bills or claims against the steamship "Garonne." State fully what was said to you or what documents were shown to you.

Int. 10. State what, if any thing, was said to you or in your presence at that interview to the effect

(Deposition of Frank S. Pusey.)

that the North Alaska Steamship Company or Mr. Smith, or his New York associates, or any person was prepared to advance the amount of money necessary, if any should prove to be necessary, to pay any expense that might be owing for supplies, repairs and betterments to the steamship "Garonne" as testified to by Mr. Bogle on page 51.

Int. 11. What knowledge had you at that time or at the time of the execution of the trust agreement (Complainant's Exhibit 3), or the note (Complainant's Exhibit 2), or the mortgage (Complainant's Exhibit 4), of any indebtedness against the ship "Garonne," and state the source of your knowledge, if you have any such knowledge?

Int. 12. State what occurred in your presence at that interview or at an interview had the same afternoon, or the next morning between Mr. Waterhouse, Mr. Bogle, Mr. Smith and yourself in reference to further reports of indebtedness against the "Garonne" which had come in subsequent to the prior interview. State what Mr. Smith said to you or in your presence with reference to said indebtedness, particularly with reference to obtaining money from New York to pay the same and to the payment of the same?

Int. 13. I call your attention to the testimony of Mr. Bogle contained between page 52, line 12, and

(Deposition of Frank S. Pusey.)

page 53, line 16, and ask if the same agrees with your knowledge of what occurred in your presence at that interview; if not, then state in what respect said testimony differs with your knowledge of what occurred in your presence at that interview?

Int. 14. State if Mr. Waterhouse, or Mr. Bogle, or Mr. Smith, or any person informed you at any time while you were in Seattle as to the amount that the North Alaska Steamship Company was owing outside the amount due to Mr. Waterhouse on the balance of the purchase price?

Int. 15. State if you know who prepared the trust agreement contained in Complainant's Exhibit 3.

Int. 16. State if the statement in Mr. Bogle's testimony, page 54, lines 17 to 27, in reference to the preparation of the trust agreement (Complainant's Exhibit 3) is correct, if not state in what respect it is incorrect?

Int. 17. You may state if the statement in Mr. Bogle's testimony, page 54, lines 4 and 5, to the effect that you requested Mr. Waterhouse to represent General Dodge's interest as trustee in Seattle is correct; if not, state in what respect it is incorrect?

*In the Circuit Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

IN EQUITY—No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE and COMPANY, Incor-
porated and FRANK WATERHOUSE,

Defendants.

Answers to Interrogatories by Frank S. Pusey.

Answers to interrogatories propounded to Frank S. Pusey, witness for the complainant in the above-entitled action, residing at the city of New York, State of New York, taken by Willis Van Valkenburgh of New York aforesaid, notary public and special examiner, at 15 William street, New York City on May 24, 1906, the said Frank S. Pusey being first duly sworn on oath, deposes and says in answer to;

Int. 1 Answer. I am.

Int. 2 Answer. No it is not correct.

Int. 3 Answer. It is incorrect in that there was no such conversation or occurrence about recognizing any agreement and furthermore there never was

(Deposition of Frank S. Pusey.)

any suggestion by anyone that General Dodge's claim was against Charles B. Smith, but on the contrary was a claim against the North Alaska Steamship Company.

Int. 4 Answer. Mr. Smith did not state to Mr. Waterhouse in my presence that the indebtedness was an individual obligation of his own, but on the contrary stated it was an indebtedness of the North Alaska Steamship Company, and must be taken care of.

Int. 5 Answer. Mr. Smith corroborated all that was stated in the agreement, Complainant's Exhibit 1, and expressed his willingness to do all in his power to protect General Dodge's claim before the steamship sailed.

Int. 6 Answer. This statement of Mr. Waterhouse is not correct.

Int. 7 Answer. I did not ask Mr. Waterhouse to act as trustee for General Dodge, that proposition was made by him (Waterhouse) and presented to me by him in the form of the trust agreement, Complainant's Exhibit 3 to protect General Dodge's claim, and not as a matter of accommodation, but as a settlement with me in order that the steamship might sail without interference by legal proceedings on my part, and in order that I would not attach the steam-

(Deposition of Frank S. Pusey.)

ship "Garonne" or garnishee freight and passenger moneys.

Int. 8. Answer. No, sir, I never knew Mr. Hastings nor heard his name mentioned.

Int. 9. Answer. No statement data or memoranda of any kind relating to expenses bills or claims against the North Alaska Steamship Company or the steamship "Garonne" were shown to me by anyone. The amount due on balance of purchase price and General Dodge's claim against the North Alaska Steamship Company were spoken of, and the amount of freight and passenger moneys due were also spoken of, but nothing was said of any excess of bills against the "Garonne" over freight and passenger moneys, and I had no knowledge of any such excess.

Int. 10 Answer. Nothing whatever was said by Mr. Smith in my presence and nothing was said by me or anyone else that the North Alaska Steamship Company or Mr. Smith, or his New York associates or any other person or persons would advance money for bills incurred for supplies, repairs and betterments for the steamship "Garonne"—no statement was made nor was it suggested that there were bills for supplies, repairs or betterments to the steamship "Garonne" in excess of freight and passenger moneys.

(Deposition of Frank S. Pusey.)

Int. 11 Answer. I had no personal knowledge of any indebtedness against the ship, except the claim of General Dodge and some balance due on the purchase price. I recollect hearing Mr. Waterhouse state that there were some bills still unpaid against the ship, but nothing was said in regard to the payments of those bills in any other way than by using the moneys coming in from the freight and passenger receipts.

Int. 12 Answer. I have no recollection of anything being said about further reports of indebtedness against the steamship "Garonne" which had come in subsequent to the prior interview and nothing was said about obtaining money from New York to pay any indebtedness of the steamship "Garonne" for supplies, betterments or repairs, etc., or of wiring New York for money—nothing of that kind was mentioned.

Int. 13 Answer. Mr. Smith said nothing to me or in my presence in reference to obtaining money from New York to pay any bills existing against the steamship "Garonne" in Seattle, nor did I know of any such bills in excess of freight and passenger moneys and nothing was said about wiring New York for money.

Int. 14 Answer. No; except the amount due General Dodge.

(Deposition of Frank S. Pusey.)

Int. 15 Answer. The attorney for Mr. Waterhouse.

Int. 16 Answer. The statement is incorrect in that I did not prepare any agreement, on the contrary the agreement was entirely prepared by the attorney for Mr. Waterhouse.

Int. 17 Answer. I did not request but I did agree to accept Waterhouse & Company as trustee to represent General Dodge's interest and to protect the same.

FRANK S. PUSEY.

Subscribed and sworn to before me the 24th day of May, 1906.

[Seal] WILLIS VAN VALKENBURG,
Notary Public and Special Examiner.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN EQUITY—No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE AND COMPANY, In-
corporated, and FRANK WATERHOUSE,
Defendants.

**Certificate of Special Examiner to Deposition of
Frank S. Pusey.**

To all to Whom These Presents Shall Come:

I, Willis Van Valkenburg, notary public, residing and practicing in the County of New York, city of New York, State of New York, and the special examiner named in the annexed stipulation signed by the solicitors for the above-named complainant and the defendants.

Do hereby certify that pursuant to the said stipulation, Frank S. Pusey, the witness named in the said stipulation appeared before me on the 24th day of May, 1906, at 15 William Street, New York City when I took his answers or deposition to the interrogatories propounded by the solicitor for complainant in the above-named action and caused them to be written out on a typewriter, then said answers or deposition was read to the witness who signed them and thereupon completed said deposition, the said answers or deposition being hereunto annexed, and I further certify that previous to such answers or deposition being taken, I duly administered to the said Frank S. Pusey the following oath "Do you solemnly swear that you will true answers make to all such questions as shall be asked you upon these interrogatories without favor or affection to either party and

therein you shall speak the truth, the whole truth and nothing but the truth, so help you God.”

In testimony whereof, I, the said notary public and special examiner, have hereunto subscribed my name and affixed my notarial seal this 24th day of May, 1906.

[Seal] WILLIS VAN VALKENBURG,
Notary Public and Special Examiner.

[Endorsed]: Deposition of Frank S. Pusey. Filed in the U. S. Circuit Court, Western Dist. of Washington, Jun. 21, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Inc., and FRANK
WATERHOUSE,

Defendants.

Stipulation Relative to Taking Testimony.

It is hereby stipulated and agreed by and between the parties hereto that the taking of testimony be-

fore Hon. Eben Smith, Master in Chancery, by virtue of the order of reference made in this cause by said court on the 18th day of September, 1905, be continued over from the next succeeding rule day, to wit, from October 2, 1905, until such time as said Master in Chancery may determine, without prejudice to either of the parties to this action.

GEO. H. KING,
Solicitor for Complainant.

W. H. BOGLE,
Solicitor for Defendant.

Sep. 28, 1905.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN EQUITY—No. 1290.

G. M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Inc., et al.,

Defendants.

Subpoena to Frank Waterhouse.

The President of the United States of America to
Frank Waterhouse, Greeting:

You are hereby required that all and singular
business and excuses being set aside, you appear

and attend before the United States Circuit Court for the Western District of Washington, Northern Division, before Eben Smith, Esq., Master in Chancery of said Court and the Referee to whom by order of said Court was referred the above-entitled action at the office of said Master in Chancery at room 715 in New York Block, in the city of Seattle, King County, Washington, on the 23d day of October, 1905, at 10:00 o'clock A. M., then and there to testify in the above-entitled cause now pending in said court on the part of the plaintiff, and you are not to depart therefrom without the leave of the Court;

And you are further required to bring with you any and all books, papers and documents in your possession, or under your control, or in the possession or under the control of the defendant Frank Waterhouse & Co., Inc., relating or appertaining to the sale of said Frank Waterhouse & Co., Inc., of the steamer "Garonne" to the Merchants' & Miners' Steamship Co. of New York, set out and alleged in your answer filed in this cause:

And you are further required to bring with you and produce any and all vouchers, receipts, or other evidence of payment in your possession, or under the control of the defendant Frank Waterhouse & Co., Inc., showing the payment of \$30,000.00 or any part thereof in payment of liens against said steamship

“Garonne,” as set out and alleged in paragraph seven of your answer filed in this action, and for failure to attend or to produce the aforesaid papers, or any of them as above required, you will be deemed guilty of contempt of court and liable to pay to the parties aggrieved all loss and damage sustained thereby.

Witness my hand and official seal as United States Master in Chancery, in the District of Washington, Western District, Northern Division, this 18th day of October, A. D. 1905.

[Seal]

EBEN SMITH,

As United States Master in Chancery, as above.

RETURN ON SERVICE OF WRIT.

United States of America,
District of Washington,—ss.

I hereby certify and return that I served the annexed Witness Subpoena on the therein named Frank Waterhouse & Co., Inc., et al., by handing to and leaving a true and correct copy thereof with Frank Waterhouse personally at Seattle, Wn., in said District on the 19th day of October, A. D. 1905.

C. B. HOPKINS,

U. S. Marshal.

By W. L. Gritman,

Deputy.

MARSHAL'S FEES:

Service	50
Mileage	12
	<hr/>
	62¢

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN EQUITY—No. 1290.

G. M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Inc.,

Defendants.

Subpoena to John Jordison.

The President of the United States of America, to
John Jordison, Greeting:

You are hereby required that all and singular
business and excuses being set aside, you appear
and attend before the United Circuit Court for the
Western District of Washington, Northern Division,
before Eben Smith, Esq., Master in Chancery of said
court, and the referee to whom, by order of said
Court, was referred the above-entitled action, at the
office of said Master in Chancery, at room 715 in the

New York Block, cor. 2d Ave., and Cherry Street, in the city of Seattle, King County, Washington, on the 10th day of January, 1906, at 10 o'clock, A. M., then and there to testify in the above-entitled cause now pending in said court, on the part of the plaintiff, and you are not to depart therefrom without the leave of the Court.

Witness my hand and official seal as United States Master in Chancery for the Western District of Washington, Northern Division, this 8th day of January, A. D. 1906.

[Seal]

EBEN SMITH,

As United States Master in Chancery as Above.

United States Marshal's Office,
Western District of Washington.

I hereby certify and return, that I received the within witness subpoena on the 8th of Jan. 1906, and personally served the same on the 8th day of Jan., 1906, on John Jordison by delivering to and leaving with him, said defendant named therein, at Seattle, county of King, in said District, attested copy thereof, at the dwelling-house or usual place of abode of said John Jordison.

C. B. HOPKINS,

U. S. Marshal.

By W. L. Gritman,

Deputy.

MARSHAL'S FEES:

Service50¢
Mileage12
	<hr/>
	.62¢

Seattle, Wn., Jan. 9th, 1906.

*In the Circuit Court of the United States for the
Western District of Washington, Northern
Division.*

IN EQUITY—No. 1290.

G. M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Inc.,

Defendants,

Subpoena to James Fowler.

The President of the United States of America, to
James Fowler, Greeting:

You are hereby required that all and singular
business and excuses being set aside, you appear
and attend before the United States Circuit Court
for the Western District of Washington, Northern
Division, before Eben Smith, Esq., Master in Chan-
cery of said court, and the referee to whom, by order
of said Court, was referred the above-entitled ac-

tion, at the office of said Master in Chancery, at room 715 in the New York Block, cor. 2d Ave., and Cherry Street, in the city of Seattle, King County, Washington, on the 5th day of December, 1905, at 10 o'clock A. M., then and there to testify in the above-entitled cause now pending in said court, on the part of the plaintiff, and you are not to depart therefrom without the leave of the Court.

Witness my hand and official seal as United States Master in Chancery for the District of Washington, Western District, Northern Division, this 2d day of December, A. D. 1905.

[Seal]

EBEN SMITH,

As United States Master in Chancery as Above.

MARSHAL'S RETURN.

I hereby certify and return that I received the within subpoena in equity on the 2d day of Dec., 1905, and personally served the same on Dec. 2 /05, by delivering and leaving with James Fowler a true and certified copy of the within subpoena.

C. B. HOPKINS,

U. S. Marshal.

By W. L. Gritman,

Deputy.

MARSHAL'S FEES:

Service50
Mileage12
	<hr/>
	.62¢

Advanced witness fees, \$1.60.

*In the Circuit Court of the United States for the
Western District of Washington, Northern
Division.*

No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Inc. (a Corpora-
tion), and FRANK WATERHOUSE,

Defendants.

**Stipulation Relative to Appointment of Special Ex-
aminer, etc.**

It is hereby stipulated by and between the parties hereto and their respective counsel, that N. W. Bolster, Esq., be appointed by the Court special examiner to take further testimony in this case and report the same to the court; and that the testimony heretofore taken in this cause before Hon. Eben Smith, Master in Chancery, and stenographically reported by said N. W. Bolster, be certified

by him to this court together with such other and further testimony as may be taken before said N. W. Bolster.

Dated Seattle, Washington, April 7, 1906.

_____,
Counsel for Complainant.
_____,
Counsel for Defendant,

*In the Circuit Court of the United States for the
Western District of Washington, Northern
Division.*

No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Inc. (a Corpora-
tion) and FRANK WATERHOUSE,
Defendants.

Order Appointing Special Examiner.

This cause coming on for hearing on the stipulation by counsel and motion for appointment of a special examiner in this cause, counsel for both parties being present in open court and consenting thereto:

It is hereby ordered that N. W. Bolster, Esq., be and he hereby is appointed special examiner of this

court in this cause, and that this cause be and the same hereby is referred to the said E. W. Bolster, Esq., as special examiner aforesaid, and he is hereby directed to hear testimony and take proofs of all and singular the matters in issue herein and report the same to this court.

And it is further ordered that all the testimony heretofore taken in this cause before Hon. Eben Smith, Master in Chancery, including all exhibits offered in evidence and all objection or objections thereto, which said testimony was stenographically taken down by said N. W. Bolster and by him transcribed into longhand, be by said N. W. Bolster, as special examiner in this cause, certified and reported to this court, together with all future testimony to be taken by him as such special examiner.

And it is further ordered that the time for taking the testimony in this cause on behalf of the defendants is hereby enlarged and extended for a period of 15 days from and after the 5th day of April, 1906, and that the plaintiff have thirty (30) days hereafter in which to present testimony in rebuttal.

Done in open court this 9th day of April, 1906.

(Signed)

C. H. HANFORD,

Judge.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERCOURSE & CO. Inc. (a Corpo-
ration), and FRANK WATERHOUSE,

Defendants.

Order Appointing Special Examiner.

This cause coming on for hearing on the stipulation by counsel and motion for appointment of a special examiner in this cause, counsel for both parties being present in open court and consenting thereto:

It is hereby ordered that N. W. Nolster, Esq., be and he hereby is appointed special examiner of this court in this cause, and that this cause be and the same hereby is referred to the said N. W. Bolster, Esq., as special examiner aforesaid, and he is hereby directed to hear testimony and take proofs of all and singular the matters in issue herein and report the same to this court.

And it is further ordered that all the testimony heretofore taken in this cause before Hon. Eben

Smith, Master in Chancery, including all exhibits offered in evidence and all objection or objections thereto, which said testimony was stenographically taken down by said N. W. Bolster and by him transcribed into longhand, be by said N. W. Bolster, as special examiner in this case, certified and reported to this court, together with all future testimony to be taken by him as such special examiner.

And it is further ordered that the time for taking the testimony in this cause on behalf of the defendants is hereby enlarged and extended for a period of 15 days from and after the 5th day of April, 1906, and that the plaintiff have thirty (30) days hereafter in which to present testimony in rebuttal.

Done in open court this 9 day of April, 1906.

*In the Circuit Court of the United States for the
Western District of Washington, Northern
Division.*

No. 1290.

G. M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., et al.,

Defendants.

Order Extending Time for Taking Testimony.

This cause coming on for hearing on motion of the complainant for an order directing the special master to report the testimony taken to this court, and the Court being fully advised in the premises:

It is hereby ordered that the time for taking testimony in the above-entitled cause, on behalf of the defendants, be, and the same hereby is enlarged and extended until April 30th, 1906, and that the plaintiff have thirty days thereafter in which to present testimony in rebuttal.

This order to be entered at the cost of the defendants.

Done in open court this 30th day of April, 1906.

C. H. HANFORD,

Judge.

*In the Circuit Court of the United States for the
Western District of Washington, Northern
Division.*

No. 1290.

GRENVILLE M. DODGE,

Complainant.

vs.

FRANK WATERHOUSE & COMPANY, Incorporated,
and FRANK WATERHOUSE,

Defendants,

Order Fixing Time for Taking Testimony.

On motion of the complainant, it is hereby ordered that N. W. Bolster, Esq., Special Examiner, do hereby certify forthwith to this court all the testimony and exhibits taken by him as such special examiner, and also all the testimony and exhibits taken before the late Hon. Eben Smith, Master in Chancery of this court, in accordance with the stipulation between counsel dated April 7th, 1906, and on file in this cause.

Done in open court this 11th day of June, 1906.

C. H. HANFORD,
Judge.

Testimony.

WILLIAM H. ROWE, produced as a witness in behalf of complainant, being first duly cautioned and sworn, testifies as follows:

Q. (By Mr. KING.) State your name.

A. William H. Rowe.

Q. Were you connected with the North Alaska Steamship Company? A. I was, yes, sir.

Q. What position did you hold in it?

A. Vice-president.

Q. Were you in New York in the early part of July, 1904? A. I was.

Q. How near can you fix that date, Mr. Rowe?

(Testimony of William H. Rowe.)

A. Until the 13th day of July, from the first part of the month.

Q. Do you know Mr. Frank Waterhouse?

A. I do.

Q. Was he in New York at that time?

A. He was, in the first of July, yes, sir.

Q. Any earlier than that?

A. I think the last of June or the first of July; I could not be able to fix the exact dates, but at any rate, the first of July.

Q. Was Mr. Bogle there at that same time?

A. He was.

Q. Do you know of any meetings of Mr. Waterhouse and others with reference to the transfer or sale or conveyance of the steamer "Garonne," in New York about that time?

A. Yes, there were such meetings.

Q. Where were those meetings held?

A. At the office of attorney Baldwin and at the office of the Merchants' Association.

Q. Where are those offices?

A. The Merchants' Association is on Broadway; I cannot recall the number, although I have been there a thousand times, I guess. It is in the New York Life Insurance building on Broadway and

(Testimony of William H. Rowe.)

Baldwin's office I think is on Pine street; but I am not sure what street or number.

Q. Were you present at those meetings?

A. I was.

Q. I mean at the meetings?

A. Part of them.

Q. Did you take part in the meetings?

A. Part of them, yes, sir.

Q. And some you did not take part in?

A. Yes.

Q. How many meetings were held, do you know?

A. I do not. I was present at three, I think.

Q. How long, to your knowledge, was Mr. Waterhouse in New York about that time?

A. I should say a week or ten days.

Q. Do you know General Dodge? A. I do.

Q. How long have you known him, either personally or by reputation?

A. I know him personally since 1902, and I have known him by reputation since I was a little child, I guess.

Q. Is he in business in New York?

A. He is.

Q. Do you know where his office is?

A. I do; Number 1, Broadway.

Q. Do you know how long he has had that office?

(Testimony of William H. Rowe.)

A. Ever since I have known him personally and a good deal longer.

Q. You may state whether or not he is a man prominent in business and financial circles in New York?

A. He is, very much so.

Q. A well-known man?

A. He is.

Q. Did you know of any effort of Mr. Waterhouse, or anyone representing Mr. Waterhouse, to communicate with General Dodge during those meetings, with regard to the sale of the steamer "Garonne"?

A. I did not know of it.

Q. You did not know of your own knowledge?

A. No.

Q. How far was the Merchants' Association's office from General Dodge's office?

A. I should say it is less than a mile.

Q. And Baldwin, Griggs & Baldwin's office?

A. About half-way between. About less than half a mile.

Q. Do you know whether General Dodge's office has telephone communication?

A. It had.

Q. Had the Merchants' Association's office?

A. Yes, sir.

Q. And Baldwin, Griggs & Baldwin?

A. Yes.

Q. At the time of those meetings?

(Testimony of William H. Rowe.)

A. Yes.

Q. Did Mr. Waterhouse, or anyone for him, or in his presence, make any statement at that time as to the value of the steamer "Garonne"?

A. No, I do not think so.

Q. Did he make any statement at that time as to any improvements or betterments placed upon her?

A. Yes, quite extensive.

Q. State to the best of your recollection, what he said at that time?

A. I cannot remember the words; but the betterments had exceeded twenty thousand dollars.

Q. Where was that statement made and to whom?

A. I think it was in Baldwin's office.

Q. Do you know whether it was made in reference to the sale or transfer of the steamer to the Merchants' & Miners' Company.

A. No. I think it was made as an effort towards encouragement for the North Alaska Steamship Company to make its payments.

Q. After the "Garonne" left Seattle on June 2d, do you know when she returned to Seattle?

A. I could not fix the day.

Q. Had she returned when those meetings were had in New York?

A. It was during that time.

(Testimony of William H. Rowe.)

Q. Did you see, prior to June 2d, 1904, any advertisement in the public papers of Seattle, with reference to the sailing of the steamer "Garonne"?

A. I did.

Q. You may state whether those advertisements were signed by Frank Waterhouse & Co., incorporated, or not?

A. The name of Frank Waterhouse & Co. was attached as agents for the boat.

Q. As agents for what?

A. For the steamer "Garonne."

Q. As agents for the steamer "Garonne," or for the North Alaska Steamship Company?

A. It was put in the ad.—

Q. Give your best recollection?

A. I should say, it would be for the steamship.

Q. Do you, as vice-president of the North Alaska Steamship Company, know whether Frank Waterhouse was acting as agent for the steamer prior to her sailing for Nome on June 2d, 1904?

A. He was.

Q. Do you know whether he received any commission or compensation as such agent?

A. He charged a commission on the sales of tickets.

Q. Did Mr. Waterhouse, or Waterhouse & Co., have any authority, as to incurring indebtedness against the steamer?

A. Full authority.

(Testimony of William H. Rowe.)

Q. Did Mr. Waterhouse ever make any statement to you with reference to incurring indebtedness against the steamer, and his authority to that effect?

A. One of the conditions was that he must—

Q. State whether he did or not?

A. Yes.

Q. When and where was that statement made?

A. In the office of the North Alaska Steamship Company—No. 42 Broadway.

Q. At about when?

A. In the latter part of April, I think.

Q. 1904? A. 1904.

Q. Give that statement.

A. He was very positive and insistent upon being given such authority, that no debts could be contracted without his permission against the "Garonne."

Q. That was acquiesced in by the North Alaska people?

A. I do not think we took a vote on it, but the majority of the board of directors was there that day, I think, although I do not think it was a formal meeting.

Q. During the time that Mr. Frank Waterhouse and Mr. Bogle were in New York in the early part of July, 1904, from what you know of the circum-

(Testimony of William H. Rowe.)

stances at that time, you may state whether or not, in your opinion either of them, if they had desired, would have any difficulty in communicating with General Dodge?

Mr. BOGLE.—I object to that unless it states some facts, instead of his opinion.

A. I do not think they would have any trouble in connecting with him, either in person or his representative; there would have been no trouble anyway with the representative of General Dodge.

Q. (By Mr. KING.) Has General Dodge a regular office there? A. Yes.

Q. That is an office and clerks?

A. He has a manager there all the time, except Sundays; during business hours, I mean.

Q. Were there any meetings with reference to the transfer of the "Garonne," at or about that time, at which you were not present?

A. There were.

Q. Where were those meetings held?

A. At the same place. I was present in the office of Baldwin and also at the Merchants' Association, when the talk relative to the sale of the boat was made, but not actually in my presence.

Q. Not actually in your presence?

(Testimony of William H. Rowe.)

A. Not actually in my presence, but I was in the same rooms at the time.

Q. You were not invited to those meetings?

A. No.

Q. The meetings then, as I understand you, were held in one room, and you were in another room?

A. Yes.

Q. You do not know what took place?

A. No; not only by hearsay.

Q. Do you know of any effort made by Frank Waterhouse, or by Frank Waterhouse & Company, or anybody in their behalf to effect a sale of the steamer "Garonne" at that time, other than with the Merchants' & Miners' Company?

A. Not any that I know of.

Cross-examination.

Q. (By Mr. BOGLE.) Mr. Rowe, what was the object of Mr. Waterhouse's visit to New York on that occasion?

A. I think that it was to sign up the mortgage which had been prepared here relative to the "Garonne," and put it in better shape than it was previous to that time; in fact, to be secured on his deferred payments.

Q. Was he not calling on your company, the North Alaska Steamship Company, to meet the de-

(Testimony of William H. Rowe.)

ferred payments, and also to pay off the indebtedness incurred by that company against the steamer "Garonne"?

A. That was his object, I suppose.

Q. At the meeting to which you have referred, and which was attended by you at the Merchants' Association, a statement was submitted by him, showing the amount of indebtedness incurred against the "Garonne" by the North Alaska Steamship Company, which had been reported to him by those holding claims, was there not? A. Yes.

Q. And also a statement of the balance due him on the purchase price? A. Yes.

Q. Is it not a fact that he called upon the North Alaska Steamship Company at that time to make arrangements to meet those obligations?

A. He did.

Q. Did your company meet them?

A. They did not.

Q. Was it able to meet them? A. No.

Q. What did your company do about it?

A. Simply said they were unable to meet the payments at that time.

Q. How long did these negotiations last before your company finally abandoned its option, Mr. Rowe? Over how many days were they extended?

A. Several days.

(Testimony of William H. Rowe.)

Q. Ultimately, your company formally abandoned its right to purchase the "Garonne," didn't it? A. It did.

Q. And your board of trustees passed a resolution to that effect? A. They did.

Q. And surrendered to Mr. Waterhouse all rights they had in the boat? A. They did.

Q. That was because of their inability to meet the amounts that were due against the boat?

A. Yes.

Q. You knew that General Dodge claimed to be a creditor of the North Alaska Steamship Company, did you? A. I did.

Q. There were quite a number of creditors of the North Alaska Steamship Company, who attended one or more of those meetings, were there not?

A. I do not know personally, of anyone that was a creditor; not at any time while I was present.

Q. Don't you recollect that Mr. Brown—that a man by the name of Brown, who was a creditor of the North Alaska Steamship Company to the extent of some, either twenty or thirty thousand dollars, was called in by your company, or the directors of your company, into consultation over those matters before your company ultimately abandoned their right to purchase the "Garonne"?

(Testimony of William H. Rowe.)

Mr. KING.—We object to the question as immaterial and not proper cross-examination.

A. Of my own knowledge I do not know that.

Q. (By Mr. BOGLE.) Did you meet Mr. Brown in the offices of the Merchants' & Miners' Steamship Company, or the Occidental Securities Company or in the office of McKee & Frost, the attorneys of the North Alaska Steamship Company, during those negotiations?

(Counsel for complainant interposes same objections.)

A. You mean the negotiations of the first of July or about that time?

Q. Yes, on that trip; I do not attempt to designate the date because I do not know which day it was, as it extended over a week.

A. There was only one meeting that I was present at with Mr. Brown, and I cannot tell whether that was at that time or not, and I cannot say whether Mr. Waterhouse was present or not, and that was at the Merchants' Association.

Q. Don't you remember, Mr. Rowe, that Mr. Brown came to see Mr. Waterhouse and myself and subsequently went to see you and the other trustees or directors of the North Alaska Steamship Company, asserting that he held some kind of an agree-

(Testimony of William H. Rowe.)

ment from your company that he was to have a lien on the "Garonne," or on the earnings of the "Garonne" for the amount of his loan?

(Counsel for complainant interposes the same objection.)

A. Yes.

Q. Now, don't you remember that was during those negotiations?

A. It was at that time, yes, but the amounts, Mr. Bogle, you have gotten away beyond when you say, "from twenty to thirty thousand dollars."

Q. What was the amount of Mr. Brown's claims?

Mr. KING.—I object to the question as irrelevant, immaterial and incompetent and as tending to divert the issues.

A. I think about five thousand dollars or something like that.

Q. (By Mr. BOGGLE.) How many other creditors of the North Alaska Steamship Company were consulted by the officers and directors of that company during those negotiations?

Mr. KING.—I object to the question as irrelevant and immaterial and not proper cross-examination.

A. None that I know of.

Q. (By Mr. BOGGLE.) Don't you remember that there was some widow lady in New York who had

(Testimony of William H. Rowe.)

advanced some money to the company and that she or her representative was consulted by some of you?

(Counsel for complainant interposes same objection.)

A. I do not know of any such lady.

Q. Your company, during those negotiations, was making every effort in its power to arrange to raise the amount of money needed to take care of those claims against the ship, were they not?

A. They were.

Q. And, in so far as you knew, the other directors and officers exhausted every resource to that end, within their power?

A. Within my power, personally.

Q. And, so far as you know, the other directors, were equally diligent in endeavoring to arrange the matter in some way, were they not?

A. Of the North Alaska Steamship Company, yes.

Q. Do you know why General Dodge was not notified by some officer of your company of the pendency of those negotiations?

Mr. KING.—I object to the question for the reason that it calls for the conclusion of the witness and is irrelevant and immaterial, and secondly for the reason that there is no showing that any officer of

(Testimony of William H. Rowe.)

the North Alaska Steamship Company was under any obligation to notify General Dodge at all.

A. I do not.

Q. (By Mr. BOGLE.) You understood, Mr. Rowe, didn't you, that Mr. Waterhouse's object and endeavor was to collect the balance of money that was due him on the purchase price of the ship and on that being paid to him, he was ready to transfer and turn over the ship to whomsoever the company directed?

A. That was as I understood it, yes.

Q. To whomsoever the North Alaska Steamship Company directed?

A. That was as I understood it, yes, sir.

Q. Mr. Rowe, is it not a fact that there was some row on between the North Alaska Steamship Company and some of its officials and Mr. King, with reference to the manner in which some loans or advances had been secured from Mr. King and Mr. Mead by those officers.

(Counsel for complainant objects as irrelevant, immaterial and incompetent and not proper cross-examination.)

A. They claimed a misrepresentation of facts.

Q. That is, Mr. King claimed that the money had been procured from him and Mr. Mead by misrepresentation?

(Testimony of William H. Rowe.)

(Counsel for complainant interposes the same objection.)

A. Well, things did not exist out here as they expected.

Q. Well, didn't they claim, in this first meeting you had on the morning after Mr. Waterhouse and I arrived, when you and the attorneys of your company, Messrs. McKee & Frost and Mr. Mead and Mr. Baldwin and several of the other directors of your company were present; did not Mr. King there make the statement that he claimed that the money that had been advanced by him and Mr. Mead and Mr. Corwine to the North Alaska Steamship Company, had been procured from them by misrepresentation by the officers of the North Alaska Steamship Company?

(Counsel for complainant interposes same objection.)

Q. (Continuing.) What are the statements that he made; I am not asking you what are the facts; but did not Mr. King make that claim?

A. He made that statement, yes.

Q. And it is not true that there was a row on between your company and its officers and Mr. King, during practically those entire negotiations?

(Counsel for complainant interposes the same objection.)

(Testimony of William H. Rowe.)

A. Mr. King and his associates were the controlling interest of the company indirectly.

Q. In the North Alaska Steamship Company?

A. The Occidental Securities Company owned nearly all the stock of the North Alaska Steamship Company and Mr. King and his associates were the controlling interest of the Occidental Securities Company.

Q. His charge, or statement, however, was that the money by which he had secured that control was procured by misrepresentation of facts by the officers of the two companies?

Mr. KING.—We object to that as incompetent, irrelevant and immaterial, and there is no showing that General Dodge, or anyone representing him, was present there at all, and the further objection that it is not proper cross-examination.

A. He so claimed.

Q. (By Mr. BOGLE.) That was a row in which Mr. Waterhouse was not concerned in any way, and was not mixed up in?

A. I do not think so.

Q. You have stated that Mr. Waterhouse could have communicated with General Dodge or his representative?

A. Yes.

Q. Who was his representative, to whom you refer?

(Testimony of William H. Rowe.)

A. Mr. Jennings, who was in his office at No. 1 Broadway, and if he was not there some one else was always there during business hours.

Q. Did you see either General Dodge or any representative of his during the time that Mr. Waterhouse was in New York on that occasion?

A. I did not to my remembrance, I don't remember.

Q. You knew that General Dodge claimed to be a creditor of your company?

A. I understood that General Dodge had been protected by Waterhouse. Mr. Pusey had been here and had fixed it up between him and Waterhouse at the sailing time of the "Garonne."

Q. The papers that had been prepared on that occasion, had been shown to you, or were shown to you while you were in New York on that trip?

A. You mean the mortgages?

Q. Yes.

A. No; they were not; I did not see them.

Q. As a matter of fact, you knew the mortgages had been sent on there?

A. I understood they were there at the time you and Mr. Waterhouse were there.

Q. Who was the secretary of the North Alaska Steamship Company?

(Testimony of William H. Rowe.)

A. I think Mr. Leak, but I am not sure, I could not say now.

Q. I will ask you if J. V. Leak was not the secretary of that company?

A. I cannot say. There are so many companies and so many officers that I cannot remember which was which of the particular company.

Q. The North Alaska Steamship Company was a New York corporation, was it not?

A. Yes.

Q. When was it organized?

A. In the spring of 1904.

Q. For the express purpose of purchasing the "Garonne"?

A. For the purpose of purchasing the "Garonne."

Q. Its main office was in New York city?

A. It was.

Q. Its secretary was in New York city?

A. He was.

Q. And the seal of the company was there?

A. Yes.

Q. And that was the meeting place of its board of directors? A. It was.

Q. Now, Mr. Rowe, is it not a fact that you were informed before Mr. Waterhouse reached New York, that a mortgage which had been prepared

(Testimony of William H. Rowe.)

in Seattle and signed by Mr. Smith before he went north, had been forwarded to the Chase National Bank? A. I so understood.

Q. To be executed by your company?

A. Yes.

Q. By the secretary with his seal, under authority of the board of directors?

A. I so understand it, yes.

Q. Was it ever executed?

(Counsel for complainant objects as irrelevant, immaterial, incompetent and not proper cross-examination.)

A. I believe not.

Q. Why?

(Counsel for complainant interposes the same objection.)

A. Because Mr. King and Mr. Mead, who had undertaken to finance our various companies, refused to allow it to be done.

Q. Was that before Mr. Waterhouse reached New York?

A. That was at the time Mr. Waterhouse was in New York.

Q. Is it not a fact that the mortgage had been there for from two to three weeks prior to that time?

(Testimony of William H. Rowe.)

(Counsel for complainant interposes the same objection.)

A. Yes, for some time before, I should judge.

Q. Now, is it not a fact, Mr. Rowe, that the North Alaska Steamship Company was not able to raise the money to pay those liens existing against the "Garonne" which were to be paid before the mortgage was executed.

(Counsel for complainant objects as irrelevant, immaterial, incompetent and not proper cross-examination.)

A. Unable if the Occidental Securities Company did not do it.

Q. Well, the Occidental Securities Company did not do it?

A. The Occidental Securities Company did not do it, because Mr. King and Mr. Mead refused to do it, who were really the financial men in the Occidental Company.

Q. That was before Mr. Waterhouse reached New York at all?

A. They awaited the return of Mr. Mead who had been sent out here to investigate.

Q. Prior to that time you could not and did not raise the money to pay off those debts, isn't that true?

Mr. KING.—I interpose the same objection to all this line of testimony.

(Testimony of William H. Rowe.)

A. We had up to the sailing of the "Garonne," met payment after payment which had been demanded, and we had supposed that we had paid every debt that there was at the time of the sailing of the "Garonne." We had paid more money than any estimate which had been made by Mr. Waterhouse or Mr. Ferguson, and we supposed that everything was clear, and immediately after we received a wire from Waterhouse demanding, I think, thirteen thousand dollars, and then in a few days he jumped to nineteen thousand dollars, and on that the Occidental Securities Company, or, rather, Mr. King, had sent Mr. Mead, his associate, out here to investigate where this money was going to, and until the return of Mr. Mead, which we awaited, we took no action whatever.

Q. (By Mr. BOGLE.) On his return, it was disclosed that the bills for supplies and repairs on the "Garonne," exclusive of the balance of the purchase price due Mr. Waterhouse, amounted to something over thirty thousand dollars?

A. Something like that.

Q. And that was—

A. (Continuing.) It was something like twenty thousand dollars up to the day that we were in session and learned of the return of the "Garonne," and with that came additional debts.

(Testimony of William H. Rowe.)

Q. When the mortgage was sent on there to be executed, it was with the understanding that your company would pay all of those debts against the "Garonne," except the balance of the purchase price due Waterhouse, before the mortgage would be executed, or the bill of sale executed by Waterhouse to your company?

Mr. KING.—I object to that as irrelevant, immaterial, incompetent and not proper cross-examination, and there is no showing that General Dodge had any knowledge at all of this, or was present at any of those conversations.

A. We expected to pay all legitimate debts, but we had no expectation of any such debts as came in against the boat.

Q. (By Mr. BOGLE.) Who represented the North Alaska Steamship Company in Seattle during the time the "Garonne" was being prepared for her northern trip?

(Counsel for complainant interposes the same objection.)

A. W. H. Ferguson.

Q. What was his official position?

(Counsel for complainant interposes same objection.)

A. Traffic manager.

(Testimony of William H. Rowe.)

Q. He had charge of the purchasing of supplies for the ship, didn't he?

(Counsel for complainant interposes same objection.)

A. I cannot recall his contract with the company, but that was explicitly understood that he should not have.

Q. Do you know whether or not, as a matter of fact, he did have such charge?

(Counsel for complainant interposes same objection.)

A. I have no personal knowledge; being in New York.

Q. You were in New York, then, up to the time of this July meeting? A. Yes.

Q. As a matter of fact, you do not know of your own personal knowledge who represented your company in Seattle in the making of changes and alterations and repairs and betterments on the "Garonne," and in the purchase of supplies?

A. At the time Mr. Waterhouse was in New York in April I think, he demanded that no repairs nor supplies, nor anything should be bought that might become a lien against the boat, without his permission, and it was so given.

Q. But he was not to make the repairs himself?

(Testimony of William H. Rowe.)

A. Under his direction, all of them were to be made.

Q. Wasn't it his demand, Mr. Rowe, that your company, which was buying this boat on, credit, should not incur any liabilities against the boat without his permission?

A. That was what I understood.

Q. That was what he demanded.

A. He demanded that.

Q. He did not undertake to make the repairs himself, did he?

A. He had a man in charge of that repairs, as I understood.

Q. A man in charge of the "Garonne"?

A. A man who oversaw the repairs.

Q. Who?

A. (Continuing.) —and the purchase of the lumber was done by Mr. Waterhouse himself in making those repairs—

Q. How do you know that?

A. Because he wired from New York for them to go ahead over his own signature, to go ahead in fixing the decks.

Q. For who to go ahead?

A. For the contractors who made the bid for the fixing of the decks.

Q. He submitted the bids from the contractor?

(Testimony of William H. Rowe.)

A. We told him to go ahead.

Q. And he refused, prior to that, to permit those repairs to be made, hadn't he?

A. I think so, until we agreed to it. He wanted some understanding as to what should be done, and how he was to do it, and we left it to him, and he immediately wired to—I forget the name of the firm here, to go ahead with the decking of the boat.

Q. Do you know who made the contract with that firm for those repairs? A. I do not.

Q. Hadn't your agent reported—

A. Mr. Ferguson and Mr. Waterhouse were talking the matter over at the time it was brought up before the board of directors in our office in New York.

Q. You understood it was necessary to have a new deck?

(Counsel for complainant objects as irrelevant, immaterial and incompetent.)

A. That was what we understood.

Q. Your company agreed to pay those bills, didn't they? A. They did.

Q. And they agreed to pay all other bills which might be incurred against the ship?

(Counsel for complainant interposes same objection.)

A. Yes, and at the sailing of the boat, we supposed those bills were paid.

(Testimony of William H. Rowe.)

Q. But you had not been out here to know what the bills were?

A. No. Money had been wired to Waterhouse to pay them. All money was wired direct to Waterhouse for repairs, everything excepting a local office that our traffic manager had.

Q. The money that was wired out here was wired to pay specific bills to which he had called your attention by wire?

A. Yes.

Q. Mr. Rowe, why didn't you see General Dodge; knowing that he was a creditor of this company and that this mortgage had not been executed during the time of those negotiations in New York, and particularly at the time when you, as a trustee and director, voted to abandon your contract to purchase?

Mr. KING.—I object to the question as irrelevant, immaterial, incompetent, and not showing that the witness was under any obligations whatever to notify General Dodge or to call his attention to it.

Mr. BOGGLE.—I do not claim that he was.

A. I understood that Mr. Dodge had been protected by Mr. Pusey, representing him in an arrangement with Waterhouse.

Q. You knew he had not been paid, didn't you?

(Counsel for complainant interposes same objection.)

(Testimony of William H. Rowe.)

A. Yes, I knew he had not been paid the ten thousand dollars.

Q. And you knew whatever protection he got was through that mortgage?

(Counsel for complainant interposes same objection.)

A. I had not seen the mortgage.

Q. I say, you knew whatever protection he got was through that mortgage? A. Yes.

Q. And you knew that that mortgage had never been executed? A. Yes.

Q. And you knew that your company, through its board of trustees, being unable to meet its obligations, for the purchase price abandoned its contract to purchase?

(Counsel for complainant interposes same objection.)

A. Yes, but that Mr. Dodge would be protected with Waterhouse.

Q. How?

A. Because Mr. Waterhouse had entered into an arrangement with Mr. Pusey to do so, I supposed.

Q. There was nothing in your resolution which refers to Dodge in any way.

(Counsel for complainant interposes same objection.)

(Testimony of William H. Rowe.)

A. No, sir.

Q. His name was not mentioned in any of those negotiations, was it?

(Counsel for complainant interposes same objection.)

A. No.

Q. When you say, then, that he was protected, you are simply saying that you understood he was protected?

A. I understood. I did not know.

Q. Who were the attorneys of the North Alaska Steamship Company at that time?

A. McKee & Frost.

Q. Who represented the interest of Mr. King and Mr. Mead? A. Mr. Baldwin.

Q. He was of the firm of Griggs—

A. —Baldwin & Baldwin.

Q. Mr. King is a man who stands high in New York commercial circles, is he?

A. Prominently known, yes.

Q. He is at the head of one of the large firms there, "Calhoun, Robbins & Company."

A. He is one of the firm.

Q. He is the managing partner of that firm.

A. I think so.

Q. And was for many years president of the Merchants' Association of New York?

(Testimony of William H. Rowe.)

A. He was.

Q. And at that time was really the managing director of that association, was he not?

Mr. KING.—It is understood that I object to all this as irrelevant, immaterial and incompetent.

A. I think so.

Q. (By Mr. BOGGLE.) Under the conditions which you found existing among your stockholders and in your company; it was impossible for your company to meet the obligations existing against the "Garonne" at the time we were in New York, wasn't it, Mr. Rowe?

A. When Mr. Mead and Mr. King, as members or stockholders in our various companies, turned it down, we had no other resource at that time.

Redirect Examination.

Q. (By Mr. KING.) As a matter of fact, Mr. Rowe, had you any knowledge that anyone, outside of Waterhouse & Company, or Mr. Waterhouse himself, was incurring or had any authority to incur obligations against the "Garonne"?

A. Up to the time of the sailing?

Q. Up to the time of the sailing?

A. I supposed that Mr. Waterhouse was checking up every supply and repairs.

(Testimony of William H. Rowe.)

Q. Did you know anything about any obligations incurred after the sailing on June 2d?

A. I did not.

Q. You say that when King and Mead turned it down, there was nothing further to be done; I wish you would explain what you mean?

A. Mr. King and Mr. Mead had come into the Occidental Securities Company to help finance the various subordinate companies, one of which was the North Alaska Steamship Company, and they had advanced at that time something like thirty-one thousand dollars at the time of the sailing of the boat, and we supposed that we had all the obligations met, or nearly met, which would be required to outfit and run the boat for the first trip, but, as I said, immediately afterwards a demand came from Waterhouse calling for thirteen thousand dollars, and then six thousand dollars immediately after, additional; and they blamed Mr. Leak and myself for having misrepresented facts; and those were indebtedness that we had no idea would come up because estimates had been made by Mr. Ferguson and Mr. Waterhouse to us, what it would require to outfit the boat and what it would cost to make those betterments, and this was in excess of that, and I was at the end of my rope. I submitted the matter to Mr. King and Mr. Mead, and they refused to do

(Testimony of William H. Rowe.)

anything further until they investigated it, and Mr. Mead was sent out here to look into the matter, and on his return Mr. Waterhouse and Mr. Bogle followed immediately after; and that was the meetings that we had in the first of July.

I would add here, for my own protection, that Mr. King and Mr. Mead had positively refused to allow us to sell a dollar's worth of stock except what they took themselves in the Occidental Securities Company, and consequently we had no other means of getting money. That tied my hands to those particular men.

Q. I will ask you one question, which perhaps should have been asked on direct examination: Do you know, or are you acquainted with the value of the "Garonne" at the time Mr. Waterhouse was in New York?

A. With the betterments that we had made, I considered that she was worth one hundred thousand dollars.

Recross-examination.

Q. (By Mr. BOGLE.) You had never seen the ship, had you, Mr. Rowe?

A. Not to make any inspection of her—I had seen her.

(Testimony of William H. Rowe.)

Q. The original contract of purchase by you and your associates was made upon the recommendation of Mr. Ferguson, wasn't it?

A. Mr. Ferguson. Of course, we knew the boat by reputation.

Q. What was the capital stock of the North Alaska Steamship Company?

A. Three hundred thousand dollars.

Q. How much of that was paid up stock?

(Counsel for complainant objects as irrelevant, immaterial and incompetent.)

A. The exact details of the organization of the company is not familiar here with me at the present time.

Q. Is it not a fact that the Occidental Securities Company held all of the stock of the North Alaska Steamship Company?

A. Practically all.

Q. Is it not also true that there was no cash paid into the treasury of the North Alaska Steamship Company for its stock?

(Counsel for complainant interposes same objection.)

A. Very little, if any.

Q. You do not know of any, do you?

A. No. I came under an agreement with the Occidental Securities Company.

(Testimony of William H. Rowe.)

Q. It was organized merely to receive the titles to the steamship "Garonne" when she was paid for?

A. Yes.

Q. And the payments that were made on the "Garonne" were made with moneys that were borrowed either by the North Alaska Steamship Company or the Occidental Securities Company?

A. Or the sale of the Occidental Securities Company's stock.

Q. What was the capital stock of the Occidental Securities Company?

(Counsel for complainant interposes the same objection.)

A. Three million, I think.

Q. How much of that was actually paid in cash?

A. I could not say.

Q. Was any of it paid up in cash?

A. Oh, yes.

Q. You stated that Messrs. King and Mead—

A. —had paid in thirty-one thousand dollars into the Occidental.

Q. How much stock of the Occidental did they receive for that?

(Counsel for complainant interposes the same objection.)

A. I cannot recall now—

Q. I understood you to say—

(Testimony of William H. Rowe.)

A. Quite a bit of it.

Q. I understood you to say that they held the controlling interest in the Occidental Company?

A. I had turned in considerable mining interests and I gave them a certain amount of my own holdings as a bonus.

Q. They held something over a million and a half of the Occidental, didn't they?

(Counsel for complainant interposes same objection.)

A. About a million, I think.

Q. And then they held large blocks of each of the subsidiary companies, that were owned by the Occidental?

(Counsel for complainant interposes same objection.)

A. No, sir, only as they held it through the Occidental.

Q. How much of the stock of the Occidental was issued?

(Counsel for complainant interposes same objection.)

A. Nearly all of it.

Q. Then if King and Mead only had a million of that stock they didn't have a majority?

A. I had a million with some of my friends, and we had entered into a voting arrangement, so that

(Testimony of William H. Rowe.)

they had the control under a certain fixed arrangement with them.

Q. Now, for this million of stock in the Occidental, they paid in thirty-one thousand five hundred dollars? A. They were to pay more—

(Counsel for complainant interposes same objection.)

A. (Continuing) —under the arrangement whereby they received one million dollars of the Occidental Company's stock, which they never lived up to. They had done so up to the time of the sailing of the "Garonne" and had paid in a partial amount; they agreed the amount to be paid in was thirty-one thousand dollars, and they stopped when those additional debts which we had no idea of came up. It was as much a surprise to me as it was to them.

Q. The assets of the Occidental Company consisted of certain mining claims in the Nome district?

A. Yes.

Q. And the contract to purchase the "Garonne"?

(Counsel for complainant objects as irrelevant, immaterial, incompetent and not proper cross-examination.)

A. The assets was the stockholdings that they had in companies that controlled mining claims in Alaska, yes. The Occidental had no claims of its own, simply it was a stockholding company.

(Testimony of William H. Rowe.)

Q. Do you know anything about this indebtedness claim by General Dodge against the North Alaska Steamship Company?

A. Yes, I know the money was advanced.

Q. To whom did he advance the money?

Mr. KING.—Objected to as irrelevant, immaterial, incompetent and not proper cross-examination.

Q. (By Mr. BOGLE.) I will ask you if it is not a fact that he loaned this money to Charles B. Smith?

A. He did, for the purpose of making a payment on the "Garonne," and Mr. Smith agreed to see that he was secured in the purchasing of the boat.

Q. Were you present? A. Well, no.

Q. Then, when you say what Mr. Smith agreed to you are not speaking to any matter of personal knowledge?

A. Mr. Smith was my partner, and came immediately to me after he got the money and brought the money to me.

Q. What did Mr. Smith get in the North Alaska Steamship Company or the Occidental Securities Company, as the equivalent of this money that he borrowed from General Dodge?

(Counsel for complainant interposes the same objection and for the reason that General Dodge was not present and cannot be bound by it.)

(Testimony of William H. Rowe.)

A. He received nothing in the way of stock for that.

Q. How long after this money was received, before it was assumed by the Occidental Securities Company?

(Counsel for complainant interposes the same objection and because it never was assumed by the Occidental Securities Company.)

A. I don't know whether we, as a company, assumed it or not. I do not know just what papers were made out.

Q. Did the North Alaska Steamship Company ever assume it?

(Counsel for complainant interposes the same objection.)

A. I do not recall. Mr. Smith made all the arrangements for that during the time he was in New York before coming west, and just what papers were made out in relation to that I could not say.

Q. Do you remember a telegram, forwarded or sent from New York to Mr. Waterhouse by your company, in which it was stated that the company would give General Dodge as the security for those deferred payments?

(Counsel for complainant objects as irrelevant, immaterial, incompetent and not the best evidence.)

A. I do not recall such a telegram.

(Testimony of William H. Rowe.)

Q. Was there ever such an arrangement with General Dodge?

(Counsel for complainant interposes the same objection.)

A. Not that I know of.

Q. Do you not recall any arrangement of that kind at all, Mr. Rowe?

(Counsel for complainant interposes same objection.)

A. Anything securing him for the payment?

Q. Do you remember that under the contract with Mr. Waterhouse the deferred payments were to be secured in a manner which would be satisfactory to him, outside of the mortgage on the steamer?

A. That was the original arrangement.

Q. Was there ever any arrangement made by you or any officer of your company, with General Dodge, that he would become security for those deferred payments to Mr. Waterhouse?

A. Early in the spring we endeavored to do that.

Q. What was the arrangement which you made to that effect?

A. Mr. Smith, I think, made an effort to have General Dodge secured to assist us in securing those deferred payments.

Q. Was that the time he borrowed the money from him?

(Testimony of William H. Rowe.)

A. I have no positive knowledge of that, because Mr. Smith did all those transactions himself.

Mr. KING.—I move to strike out the answer, if he had no positive knowledge of it.

Q. (By Mr. BOGLE.) But the information of that came to you at the same time the information came that he borrowed money from General Dodge?

A. No.

Q. Which occurred first?

A. The loaning of the money. We needed to meet a draft from Waterhouse at a certain hour and we had not got the money at noon time, and Mr. Smith jumped out of the office and was back in a very few minutes with that money.

Q. How much was it? How much was the draft?

A. I think twelve thousand dollars or something like that at that time.

Q. How much was paid on it, do you know?

A. We paid five thousand dollars.

Q. Did you put up any other security for it?

A. Not that I know of.

Q. Did you ever make any further loan?

A. Yes. The total loan was something like fifteen thousand dollars, I think.

Q. Wasn't it twelve?

(Testimony of William H. Rowe.)

A. It was twelve at one time, and we got some more after that and we had some before, I think.

Q. Was not the total twelve?

A. I think the total was between fourteen and fifteen that Smith and I got from time to time from General Dodge.

Q. How much had you borrowed from him?

A. Nothing at all, Mr. Smith had always attended to it.

Q. Was that in connection with this purchase of the "Garonne"? A. Yes.

Q. Now, you say there was twelve or fourteen thousand dollars borrowed in that way?

A. Something like that, yes.

Q. And there were never any payments except the five thousand?

A. Five thousand dollars, that was all.

Q. How was that paid?

A. It was paid out of the thirty-one thousand dollars put in by King and Mead.

Q. Paid at the time you got the money from King and Mead?

A. When we got the first thirty-one thousand dollars, yes.

Q. Don't you recollect, Mr. Rowe, that in addition to that you put up a note in bank as collateral security for that Dodge loan?

(Testimony of William H. Rowe.)

Mr. KING.—We object to that as irrelevant, immaterial, incompetent and not proper cross-examination, and particularly immaterial for the reason that there was an accounting between the North Alaska Company and General Dodge before the ship sailed, in which there was found to be due ten thousand dollars to General Dodge, and Mr. Waterhouse had full notice of this.

A. Do you mean for the ten thousand dollars or for the full amount of the loan?

Q. (By Mr. BOGLE.) The amount of money that was borrowed from General Dodge, whatever it was.

A. Not that I know of; I don't think there was. I think there was small note for five thousand dollars put into the bank, but I have no personal knowledge of that.

Q. What note was that?

A. I do recollect—I will answer that—the payment of the five thousand dollars was made to take up a note that Mr. Smith had put in as security for part of that loan that we had from Dodge. He had secured a note from a woman by the name of Dittmar. He was wanting to make a payment to General Dodge—Mr. Smith—and he had secured this note, but he didn't get it discounted, and he put that

(Testimony of William H. Rowe.)

in instead of the cash, and it was the payment of that note; that was the five thousand dollars which had been put in that we used the money that came from King and Mead for.

Q. What became of the Dittmar note then?

A. I think it was returned to Mrs. Dittmar and she destroyed it, I presume.

Q. Did she pay it?

A. She only loaned that note as a favor to Mr. Smith.

Q. She executed the note for five thousand dollars, did she?

(Counsel for complainant objects as irrelevant, immaterial and incompetent.)

A. Yes, she made the note for five thousand dollars and loaned it to Mr. Smith.

Q. And there was no consideration between her and Mr. Smith?

(Counsel for complainant interposes same objection.)

A. Nothing only the matter of personal friendship.

Q. And then Mr. Smith took the five thousand dollars out of the money advanced by King and Mead and paid that note?

(Counsel for complainant interposes the same objection.)

(Testimony of William H. Rowe.)

A. Paid that note to Mr. Dodge, I think.

Re-redirect.

Q. (By Mr. KING.) Did the Occidental Company have a contract to purchase the "Garonne"?

A. No, sir.

Q. If so, at what price?

A. No, sir, it had no contract.

Q. Was the "Garonne" turned into the Occidental Company at any stated price? A. No.

Q. Mr. Rowe, do you know the reason, was there any reason given why King and Mead refused to advance any further money?

A. Mr. King said—I can't remember the exact words, but it was something like that, it was simply like water going through a sieve, the money that was sent out here; and that they didn't know where they stood; and he said at one time at our first meeting at Baldwin's office—he considered it for a long while as to whether he would go ahead any more, or allow the Occidental Company to—the Occidental Company was, of course, domineered by him at that time—and he positively refused to let me sell stock and raise money any other way, and the only hope I had, of course, was through King and Mead. They had a conference at Baldwin's office, which lasted a long time and they did not send for me until late

(Testimony of William H. Rowe.)

in the afternoon; and they sent for me to come over, and Mr. King finally wanted until the next day until 11 o'clock to decide whether he would go ahead any further and let the Occidental Company have any more money, and the next day at 11 o'clock—

Q. You mean “let the North Alaska Steamship Company have any more money”?

A. Let the North Alaska Steamship Company have more money, or let any of the companies owned by the Occidental. He wanted till 11 o'clock next day to decide what he should do, and we met next day at 11 o'clock at the Merchants' Association's rooms and talked it over at length. And he finally turned it down; he said that he was done.

Q. And then what was done?

A. Then he called Mr. Waterhouse out into another room and they had a talk and finally the meeting came to an end. What they were going to do I did not know. But he told me he would see me later, and the next day I think it was, or within a few days, there was another meeting at Baldwin's office and he told me that he would let me have thirty-one thousand dollars, and he about that time, let me have thirty-one thousand dollars more which was equal to the money he had already put in, to use in my mining proposition up in Alaska, and he would have nothing more to do with the steamship end of it

(Testimony of William H. Rowe.)

at all, and immediately after that they went into a meeting by themselves in which Mr. Waterhouse and Mr. Mead and Mr. King made some arrangement relative to the steamship company.

Q. That was the meeting in which they made the arrangement relative to selling the steamship to the Merchants' & Miners' Company?

A. The Merchants' & Miners' Company did not exist at that time, but they made some arrangement by which the Merchants' & Miners' Company was to be formed and handle the steamship "Garonne," and the Merchants' & Miners' Company was to pay Mr. Waterhouse and Mr. King and his associates. He did that after tying me up completely in such a way that I could not do anything. They would not put in any money and they would not let me sell any of the stock. Even if I could have done it, I was not allowed to.

Q. Have you ever seen or do you know of any statement as to the value at which the steamer "Garonne" was put into the Merchants' & Miners' Company?

A. The Mead Development Company, which is the name of the company that Mr. King and his associates have adopted, I think they, with Mr. Waterhouse, each became half owners in the Merchants' & Miners' Steamship Company. I would not be

(Testimony of William H. Rowe.)

sure of that, but I think that was the understanding.

Q. My question was, if you had ever seen or do you know of any statement as to the value at which the steamer "Garonne" was put into the Merchants' & Miners' Company; any prospectus or anything of the kind?

A. I think one hundred and twenty-five thousand dollars.

Q. Have you seen any prospectus?

A. The Mead Development Company published a statement or prospectus in which they stated the value of the boat to be one hundred and twenty-five thousand dollars.

Mr. BOGLE.—I object to that and move to strike it out as irrelevant and incompetent, and not affecting any issue in this suit.

Q. (By Mr. KING.) What time? .

A. Some time last winter, I cannot tell the exact month, but probably February or something like that.

Q. Of this year? A. This year.

Re-recross-examination.

Q. (By Mr. BOGLE.) That Mead Development Company is a company in which you and Mr.

(Testimony of William H. Rowe.)

King and his associates in New York, were connected?

A. I had nothing to do with the Mead Development Company.

Q. It is owned by Mr. King and his associates, then?

A. I mean not in the formation of it, I mean—that is, Mr. King and his associates. I have been employed by them—not as one of the formers.

Q. That is engaged in some mining in Alaska?

A. The Mead Development Company owns stock in the Merchants' & Miners' Company as well.

Q. But the company itself does mining business, is dealing in mines in Alaska? A. Mining.

Q. Now, at this conference you speak of at Mr. Baldwin's office, Mr. Waterhouse was not present, was he? A. Yes.

Q. Was he there? A. Yes.

Q. Is it not a fact, Mr. Rowe, that when you and Mr. King and Mr. McKee, your attorney, met in the Merchants' Association rooms with Mr. Waterhouse and myself the next morning, we were informed that all negotiations were off, and that they would not put up any more money?

A. Yes, that is as the Occidental Securities Company dictated to the North Alaska Company.

(Testimony of William H. Rowe.)

Q. Whatever it was, it was a matter between your companies and not between Mr. Waterhouse and anybody? A. No.

Q. We were simply notified that negotiations were off, and that no money would be raised to pay for the "Garonne"?

A. Yes, as a company, but Mr. King stated in my presence he would see what could be done to help Mr. Waterhouse out of the troubles he was representing he was in to meet those payments.

Q. Mr. Waterhouse was representing that he was in this hole?

A. He was in a very bad hole.

Q. He was having the ship thrown back on his hands with liens of something over thirty thousand dollars immediately payable, existing against it; that was his representation was it not?

A. That was what he represented, yes, sir.

Q. And Mr. King said that he would see if he could help him in any way to meet those obligations?

A. Yes.

Q. And your company then passed its resolution throwing up your option or contract to purchase?

A. Mr. King directed us to hold a meeting, as the only way out of it, after he had a talk with Waterhouse. And they formed—Mr. McKee, I think, as our attorney—formed under him, or with Mr. Bal-

(Testimony of William H. Rowe.)

dwin, or some one else connected with the Mead people a resolution for us to vote on. Mr. McKee had a consultation with Mr. King and his associates; who were present I do not know—and came to us with this resolution framed up for us to vote on.

Q. Neither Mr. Waterhouse nor myself, as his attorney, was present at that time?

A. I do not know.

Q. We were not present when you were there, when any such matter was under consideration, were we?

A. As regards the forming of that resolution?

Q. Is it not a fact that the last conference which you held with Mr. Waterhouse and myself was at the time it was announced that you would not raise any more money, nor undertake to meet the payments on the "Garonne," in the Merchants' Association, on the morning of the last negotiation?

A. After we voted on that resolution, I do not think that I saw Mr. Waterhouse; but the arrangement in which we were to do it, had all been talked over for several days.

Q. The arrangements that you were—

A. That we were to do something of this kind, because of its being directed by Mr. King and Mr. Mead—in the meantime they had been framing up something for the organization of a company—they

(Testimony of William H. Rowe.)

had been holding meetings together at which I was not present—I was given to understand that. At which an arrangement had been formed to go ahead with Mr. Waterhouse and I did not like it at that time, and of course, I could not help myself, and the company was arranged and formed. In order to make the new company amply protected, they framed this resolution and requested us to vote on it.

Q. Mr. Rowe, don't you recollect that at the next to the last meeting that was held, at which Mr. Waterhouse or his attorney was present, the proposition was made to your company, including both the North Alaska Steamship Company and the Occidental Company, that you would raise enough money to pay those liens on the "Garonne," that Mr. Waterhouse would extend his debts for an additional six, twelve and eighteen months, and that whoever furnished that money to pay off those debts then existing against the "Garonne," would have a second security on the ship for those payments; and that that was the proposition that was considered by you and Mr. Mead and all of you, and that you came in the next morning with the announcement that the proposition was turned down and no more money would be raised, do you remember that?

(Testimony of William H. Rowe.)

A. Mr. King said he would not put up any more money.

Q. At that time, isn't that the last meeting that was held as between the North Alaska Steamship Company or the Occidental Company, and Waterhouse or his attorney? A. Possibly so, yes.

Q. And subsequent to that, your board passed this resolution? A. Several days after.

Q. Now Mr. Waterhouse had served your company with notice in writing, one or two days after reaching there, that you must either meet the terms of your contract to purchase by making those payments or he would declare your contract off?

A. I think that notice in writing was made after Mr. King had turned us down.

Q. Wasn't it given two or three days before that?

A. I would not be positive as to that.

Q. And did not you and Mr. McKee come into the meeting that morning, when you turned down this proposition of Waterhouse to extend his payments if you would raise enough money to pay those debts on the boat, with written notification to Mr. Waterhouse that you would not pay the purchase price of that boat, but that you would undertake to hold the boat and Waterhouse liable for all the payments you had made on the boat?

A. I made no such statement.

(Testimony of William H. Rowe.)

Q. Did not Mr. McKee furnish a written letter to us in your presence to that effect?

(Counsel for complainant objects as not the best evidence.)

A. I don't remember that.

Q. You do not remember; did your board of trustees direct any such letter to be given?

A. I do not think so.

Q. (By Mr. KING.) Was General Dodge or anyone representing General Dodge present at all those meetings, which you testified about between the Occidental Company and the Merchants' & Miners' Company, Mr. McKee, Mr. King and Mr. Mead? A. No, sir.

Q. Anybody representing him?

A. No, sir.

Q. As far as you know, did he ever receive any information as to what was done at any of those meetings, that you have been questioned about or testified about?

A. At any of those meetings, the only one would be Mr. Waterhouse himself.

Q. As trustee for General Dodge?

A. As trustee for General Dodge.

Q. But no one else? A. No one else.

Q. Did Mr. Waterhouse at any of those meetings mention the indebtedness of General Dodge in any

(Testimony of William H. Rowe.)

way, that you know of, or seek in any way to protect his interest?

A. I do not think it was mentioned. I do not know that there was any way suggested of protecting him. Something may have been mentioned about him.

Q. (By Mr. BOGLE.) Is General Dodge a stockholder in either of your companies?

A. Very small.

Q. How much stock?

A. I think he has two hundred and fifty shares in the Rowe Alaska Company.

Q. That was one of the Occidental Companies' subsidiary companies?

A. Yes; he holds some stock in the Rowe Alaska, but not control of it.

Q. In the Occidental?

A. That stock was bought and purchased for Mr. Dodge long before this arrangement.

Q. Did he hold any stock in the Occidental Company?

A. He may have, but I am not sure.

Q. Did he hold any of the North Alaska Steamship Company? A. I do not think so, no.

Q. Did he have any arrangement or contract or understanding that he was to have stock in either of those companies? A. Not that I know of.

(Testimony of Frank Walker.)

Q. Had he ever attended a meeting of any of your companies? A. He has not.

(Testimony of witness closed.)

Whereupon it is stipulated and agreed by and between counsel for the respective parties in open court that the witness, William H. Rowe, need not sign the foregoing deposition, and that the same shall be considered of the same force and effect as if signed by said witness.

November 29th, 1905, 10 A. M.

Continuation of proceedings, pursuant to agreement. All parties present as at former hearing.

FRANK WALKER, produced as a witness on the part of the complainant, being first duly cautioned and sworn, testifies as follows:

(Q. (By Mr. KING.) What is your business, Mr. Walker?

A. Marine surveyor and consulting engineer and naval architect.

Q. How long have you been in that business?

A. In this part of the world I have been in that business about six years.

Q. Here on the Sound?

A. On Puget Sound.

Q. Are you acquainted with the steamer "Garonne"?

A. Very well, indeed.

(Testimony of Frank Walker.)

Q. Are you acquainted with her construction and general condition about July or August, 1904?

A. Yes, sir, I am well acquainted with the vessel.

Q. What was her condition at that time?

A. She was in a very fair condition.

Q. What was the condition as to her hull?

A. Her hull—her shell-plating was in splendid shape.

Q. Have you had occasion in your business to determine the value of steamers similar to the steamer “Garonne”?

A. Yes, that is part of my business. I valued many vessels on all parts of this coast.

Q. Are you acquainted with the value of the “Garonne”?

A. In the latter part of July or the first part of August, 1904, I could place a value on her, or at any time.

Q. You may state what, in your opinion, her value was at that time?

A. Well, considering—I consider the value of the “Garonne” at that time from eighty-six to ninety—

Q. Did you ever see the “Garonne” previous to her coming to these waters?

A. Yes, I saw the “Garonne” in London.

Q. How old a ship is she?

A. She was built in 1871.

(Testimony of Frank Walker.)

Q. What would it cost to build such a ship now?

A. To build such a ship at the present time it would cost from three hundred and fifty to four hundred thousand dollars.

Q. Well, say at the time she was built?

A. At the time she was built it was in the early part of iron-shipbuilding and it was a very expensively built vessel. It would be very difficult for me to give an estimate of what she cost at that time, as I am not acquainted with the iron market at that time.

Q. She could be built cheaper now than then?

A. Very much.

Q. To duplicate her now would be about—

A. From three hundred and fifty to four hundred thousand dollars.

Cross-examination.

Q. (By Mr. BOGLE.) What ballast has the "Garonne"?

A. She had permanent ballast.

Q. Do you mean rock ballast?

A. I mean permanent rock ballast.

Q. Is her hull built on the model of modern vessels?

A. Well, her hull was built, at the time she was built, up-to-date, but at the present day there is different opinions have come up at the present day.

(Testimony of Frank Walker.)

Q. Do you know what her dead-weight carrying capacity is?

A. No. She is about thirty-eight hundred gross tons; and then she has so much of her capacity cut out for passengers at the present time, that it would be hard to determine what her dead-weight carrying capacity is.

Q. Have you never examined her while she was loaded?

A. I have examined her under all conditions, loaded and unloaded.

Q. Is it not a fact that her dead-weight carrying capacity is approximately nine hundred tons?

A. I should say "no"; she would carry far more than that.

Q. Have you ever seen her when she had more dead-weight in her than that?

A. No, because when I have seen her she has been loaded with a cargo of various grades—a measurement cargo.

Q. Then you are guessing as to that, when you say she would carry more than nine hundred tons, dead-weight.

A. I am not guessing at it at all. I know she could carry more than nine hundred tons.

Q. How much more, would you say?

(Testimony of Frank Walker.)

A. The "Garonne" should carry, allowing for the difference in her passenger accommodations, about two thousand tons.

Q. Dead-weight? A. Dead-weight.

Q. That is exclusive of her ballast, is it?

A. That is exclusive of her ballast.

Q. If, as a matter of fact, an actual test has shown that she would not carry to exceed from nine hundred to a thousand tons dead-weight, your estimate of her value would be somewhat affected, wouldn't it?

A. No, sir, it would not affect, in my opinion, the value of the vessel.

Q. You think she is worth just as much whether she would carry two thousand tons or nine hundred tons?

A. That is a very peculiar question to ask. The vessel is a passenger vessel at the present time. If it was purely a freighter it would be a different matter.

Q. The only run she could be employed on on the coast with any chance of profit was the run from Puget Sound to Alaska and St. Michaels, wasn't it?

A. Well, it all depends on the call for the vessel—if there was a passenger trade anywhere.

(Testimony of Frank Walker.)

Q. Is there any other trade she could engage in with a prospect of profit?

A. Well, as I said before, if they could find a passenger trade for her they could operate with a profit.

Q. I did not ask you that. Was there one?

A. It is not my business—I am not in the passenger traffic.

Q. The Nome trade is a combination passenger and freight trade, is it not?

A. Yes, it has a great deal of passenger work and baggage and stores.

Redirect Examination.

Q. (By Mr. KING.) Do you know of the “Garonne” being valued here recently?

A. I know of the “Garonne” being valued at the early part of this year. I could not say what date.

Q. Do you know that as a fact?

A. Yes, I know it as a fact.

Q. Do you know what she was valued at then?

A. I don't know the exact figures. It was in excess of my valuation.

Q. It was in excess of your valuation?

A. Yes, it was in excess of my valuation.

Q. That is, it was in excess of eighty-six thousand dollars.

(Testimony of Frank Walker.)

A. It was in excess of eighty-six thousand dollars.

Q. Do you know how much in excess?

A. No, sir, I am not acquainted with the exact figures.

(Testimony of witness closed.)

Whereupon it is stipulated and agreed by and between the counsel for the respective parties that the witness need not sign the foregoing deposition, but that the same, when transcribed by the stenographer, shall be considered as of the same force and effect as if signed by the said witness.

December 5th, 1905, 10 A. M.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

JAMES FOWLER, produced as a witness in behalf of complainant, being first duly cautioned and sworn, testifies as follows:

Q. (By Mr. KING.) State your name.

A. James Fowler.

Q. What is your business?

A. Surveyor at the Lloyd's register, and consulting engineer.

Q. Marine engineer? A. Marine engineer.

Q. Are you acquainted with the value of iron and steel steamships? A. Yes, sir.

(Testimony of James Fowler.)

Q. Here in Seattle? A. Yes, sir.

Q. How long have you been in Seattle, Mr. Fowler?
A. Twelve months.

Q. How long have you been engaged in the business as marine engineer?

A. Twenty-five years.

Q. And represented Lloyd's for how long?

A. Nine years.

Q. Were you acquainted with the "Garonne" when she was in these waters?

A. Yes, sir.

Q. She is an iron steamship, isn't she?

A. Yes, sir.

Q. Did you have occasion to value her last March?

A. Yes, sir.

Q. For what purpose?

A. Valuation.

Q. To ascertain what she was worth?

A. Yes, sir.

Q. And what was your valuation at that time of the steamer "Garonne"?

A. The value of the hull was \$75,000. With her equipment complete, \$95,000.

Q. What do you mean by her equipment?

A. Equipment is passenger fittings, such as carpets, bedding, cutlery ware, crockery-ware, tools and so forth.

(Testimony of James Fowler.)

Q. Things which are not attached to the ship?

A. Yes, sir.

Q. Does that include sails or rigging?

A. No, sails and rigging belong to the ship.

Q. Sails and rigging would be included in the \$75,000?

A. Yes, sir.

Q. And the \$20,000 would include furniture and fittings and steward's supplies, and articles of that sort?

A. Yes, sir.

Q. You examined the ship carefully before making that valuation?

Yes, sir.

Q. Did anyone else assist you in making it?

A. Yes, Mr. Wiley, the superintendent of the Boston Steamship Company.

Q. Was that examination made at the request of Mr. Frank Waterhouse and the Frank Waterhouse Company?

A. Yes.

Mr. BOGLE.—That is all.

(Testimony of witness closed.)

Whereupon it is stipulated and agreed by and between counsel for both sides in open court that the signature of the witness to the foregoing deposition is waived, and that the same shall be considered of the same force and effect as if signed by said witness.

W. B. JACKLING, produced as a witness in behalf of complainant, being first duly cautioned and sworn, testifies as follows:

Q. (By Mr. KING.) What is your full name?

A. William B. Jackling.

Q. Where do you live, Mr. Jackling?

A. Seattle.

Q. How long have you lived in Seattle?

A. Since '71 or '72.

Q. 1871? A. Yes.

Q. What is your business, Mr. Jackling?

A. Marine engineer.

Q. How long have you been engaged in that business? A. Twenty-five years.

Q. Are you familiar with the value of iron and steel steam vessels?

A. I think so, yes, sir, to a certain extent.

Q. Did you know the steamer "Garonne" when she was in these waters? A. Yes.

Q. Did you see her at any time in the summer of 1904?

A. Yes, I saw her, but not in the summer of 1904, no.

Q. When did you see her?

A. I saw her in the early part of 1905, and the latter part of 1904.

(Testimony of W. B. Jackling.)

Q. Did you examine her at that time?

A. I was aboard of her in the early spring of 1905 and looked through her with the first assistant engineer.

Q. What was her condition at that time?

A. Fairly good.

Q. What was the condition of her hull?

A. It seemed to me to be fairly good.

Q. And the rest of her equipment?

A. It looked first rate to me.

Q. Are you acquainted with the value of steamers similar to the "Garonne"?

A. To a certain extent, yes, sir.

Q. Are you acquainted with the value of the "Garonne"?

A. Well, to the value I would place on the "Garonne," yes.

Q. What would you say was the value of the "Garonne" at the time you saw her?

A. As she stood here, when I saw her, she was worth from \$100,000 to \$125,000.

Q. Here in this market?

A. I think so, yes, sir.

Q. That included both the hull and all the equipment?

A. The "Garonne" as she stood, yes, sir.

(Testimony of W. B. Jackling.)

Q. What equipment did she have on at that time?

A. Well, the equipment that she had that I noticed was the engineers' department was fairly well equipped, and I noticed that the balance of the ship was equipped about as the the ordinary steamer is, with bedding and culinary department; it was equipped with dishes and things like that.

Mr. BOGLE.—That is all.

(Testimony of witness closed.)

Whereupon it is stipulated and agreed by and between counsel for the respective parties in open court that witness need not sign the foregoing deposition, but that the same shall be considered as of the same force and effect as if signed by said witness.

FRANK WATERHOUSE, produced as a witness in behalf of complainant, being first duly cautioned and sworn, testified as follows:

Q. (By Mr. KING.) Your name is Frank Waterhouse? A. Yes, sir.

Q. You are the defendant in this action, are you not? A. Yes, sir.

Q. And the Frank Waterhouse Company, incorporated, of which you are the president, is the other defendant? A. Yes.

(Testimony of Frank Waterhouse.)

Q. And you are the president of the Frank Waterhouse Company, incorporated?

A. Yes, sir.

Q. And were, in the summer of 1904?

A. Yes, sir.

Q. Mr. Waterhouse, were you in New York in the latter part of July and the first of August, 1904?

A. No, I was not.

Q. You were not in New York at that time?

A. No.

Q. What time, during the summer of 1904, were you in New York?

A. I was in New York in April, and again in the early part of July.

Q. Well, was that after the "Garonne" got back from Alaska?

A. No, I think not; I am not sure whether it was or not. I think she was away—she certainly was away at Alaska when I reached New York—I don't know whether she arrived back while we were there or not.

Q. What did you go to New York at that time for?

A. I went to New York to try to make a final settlement with the North Alaska Steamship Company for the price of the purchase of the "Garonne."

(Testimony of Frank Waterhouse.)

Q. For the balance due on the purchase price?

A. Yes; for the balance due on the purchase price, and to make a settlement with them, or receive money from them, or try to secure money from them, to pay the "Garonne's" debts.

Q. Previous to that there had been a mortgage on the ship drawn up, and you had it at that time, hadn't you?

A. Why, I do not think I had at that time, no, sir, but there had been a mortgage drawn up.

Q. And was delivered to you, and you sent it on to New York, didn't you? A. Yes, sir.

Q. You did not bring it to New York at that time, you had sent it before that?

A. No, I sent it before; I sent it to the Chase National Bank of New York.

Q. Did you get it at that time?

A. I do not remember, Mr. King, whether I did or not. I cannot find it, and I do not think I did. I cannot find any record of it being returned.

Q. Did you make any arrangement with the North Alaska Steamship Company people?

A. Yes.

Q. What arrangement did you make with them towards paying the money on the ship?

A. Well, they were owing me; when I went to New York they were owing me thirty-seven thou-

(Testimony of Frank Waterhouse.)

sand odd dollars—between thirty-seven and thirty-eight thousand dollars on the purchase price of the steamer, which they could not pay. They had also involved the steamer in the matter of thirty thousand odd dollars' worth of debts which they could not pay. And they agreed to surrender any rights that they might have in the vessel if I would take her back and relieve them from the indebtedness that they had created.

Q. Didn't they make an effort to pay you and to hold the steamer?

A. Oh, they made a great many efforts, yes, but they could not—

Q. How long were you in New York; how long were they dickering about this proposition?

A. You mean in July?

Q. Yes, this time.

A. Well, I think we reached New York about the first of July, and we left there about the 10th or 11th.

Q. When did you—

A. (Continuing.) —or the 9th, somewheres about that.

Q. When did you receive the ultimatum of the North Alaska Steamship Company that they could not pay anything more, and would have to surrender the steamer?

(Testimony of Frank Waterhouse.)

A. Well, we received that on either the 7th or the 8th of July, in writing. They wrote me a letter so stating. (Referring to documents.) I see this letter is dated the 9th of June, but that is a mistake, it was the 9th of July.

Q. After looking at the letter which Mr. Bogle has shown you, and refreshing your memory, can you state the date? A. The 9th of July.

Q. What did you then do with the steamer?

A. We took her back.

Q. And then what did you do with her?

A. We sold her to the—well, the merchants had formed a new company in New York, called the Merchants' & Miners' Steamship Company, and we sold the vessel to the Merchants' & Miners' Steamship Company.

Q. Who formed that company—wasn't it Mr. King? A. Mr. King, Mr. Meade—

Q. Mr. King of "Calhoun & Robbins"?

A. Yes.

Q. And Mr. Meade? A. Yes.

Q. And yourself?

A. Yes, and a number of others that I cannot remember—I do not know all their names. The Meade Development Company was the real stockholder besides myself.

(Testimony of Frank Waterhouse.)

Q. How long after you received the letter of the 9th of July from the North Alaska Steamship Company stating that they had given up all hope of raising the money and keeping the steamer—how long after that was it that you sold her to the Merchants' & Miners' Steamship Company—is that the name?

A. Yes, the Merchants' & Miners' Steamship Company.

Q. Well, how long after?

A. Two or three days after.

Q. Wasn't it immediately after?

A. It was not the same day, nor the next day; it was two or three days.

Q. Hadn't you been in negotiations with Mr. William F. King and Mr. Meade, looking to the formation of this company, and the transfer of the steamer, conditional on the North Alaska Steamship Company falling down in their purchase?

A. I do not think a word had ever been said about it.

Q. Nothing had been said about it?

A. I do not think so.

Q. Then you did not undertake to sell the steamer until after you had received the letter of July 9th?

A. No, sir.

Q. Was not Mr. Meade in Seattle shortly before you left on that trip to New York?

(Testimony of Frank Waterhouse.)

A. Yes, he went with me to New York.

Q. And did you talk it over with him as to this Merchants' & Miners' Steamship Company?

A. I never thought of it.

Q. Or disposing of the steamer to anyone?

A. I never thought of it.

Q. To Mr. King or anyone else?

A. I never suggested it. I never saw Mr. King before I got to New York.

Q. How did the Merchants' & Miners' Steamship Company come to be formed?

A. Well, it came to be formed in this way. Mr. Meade, Mr. King, Mr. W. S. Corwine and some others of their associates had subscribed for a considerable portion of the stock of the Occidental Securities Company, which was the holding company in New York of the North Alaska Steamship Company. I think they had invested somewhere between \$25,000 and \$35,000 in the stock of the Occidental Securities Company, and their money had been used by the Occidental Securities Company for the purpose of the North Alaska Steamship Company, in making the first payments on the steamship "Garonne."

Q. How do you know all this, Mr. Waterhouse?

A. I know it from the statements of Mr. Meade, and the uncontradicted statements of Mr. Meade and

(Testimony of Frank Waterhouse.)

Mr. King. The whole thing was threshed out in New York with the stockholders of the Occidental Securities Company when Mr. Meade was threatening to send them all to the penitentiary for taking his money under false pretenses.

Q. You were not a stockholder in the Occidental Securities Company. A. No, sir.

Mr. BOGGLE.—He had not finished his answer.

Mr. KING.—He has answered as far as I am concerned.

Mr. BOGGLE.—You asked him how he came to organize the company.

Q. (By Mr. KING.) State how the company was organized—I want simply to know what you know of your own knowledge.

A. I know this of my own knowledge; Mr. King and Mr. Meade were exceedingly exercised because they were in danger of losing their money that they had invested in the Occidental Securities Company; and they did the best they could while I was in New York, to arrange with the Occidental Securities Company to assist the Occidental Securities Company in paying the balance of this "Garonne" money. They found themselves unable to secure their money, to put any more into that company, and they finally declined to assist them any further.

(Testimony of Frank Waterhouse.)

Now, after the North Alaska Steamship Company had served me notice that they could not complete their contract for the purchase of the "Garonne," they could pay nothing further, and asking me to take the steamer back. I then took the matter up with Mr. King, and suggested to him that if he would pay the debts that the North Alaska Steamship Company had contracted against the "Garonne," I would be willing to take that steamer back and sell to him a half interest in the boat so as to protect him as far as possible in the investment he had made in the Occidental Securities Company; and that was subsequently done with the full knowledge of the Occidental Securities Company and the North Alaska Steamship Company and everybody connected therewith.

Q. What price was the "Garonne" sold at?

A. She was sold to the North Alaska Steamship Company for \$85,000.

Q. Eighty-five thousand dollars?

A. Well, I think that is it.

Q. How were you paid?

A. We were to be paid \$1,000 on the day that they accepted the steamer.

Q. In cash?

A. In cash.

(Testimony of Frank Waterhouse.)

Mr. BOGLE.—Are you inquiring for the sale to the North Alaska Steamship Company or the Merchants' & Miners' Company?

Mr. KING.—I am inquiring for the sale of the "Garonne" to the Merchants' & Miners' Company.

Mr. BOGLE.—Then I think the witness misunderstood you.

The WITNESS.—That is different.

Q. (By Mr. KING.) What price was the "Garonne" sold at to the Merchants' & Miners' Company? A. She was sold for—

Q. I will refresh your memory—you say in the pleadings that she was sold for \$67,000.

A. That is right.

Q. Was that true? A. That is right.

Q. Was there any of that cash?

A. Why, there was \$30,000.

Q. In cash? A. Yes.

Q. That was to pay the debts against the boat?

A. Yes, sir.

Q. And the balance was in stock?

A. The balance of the—

Q. I mean the \$37,000, that was in stock?

A. Yes.

Q. And how much—

(Testimony of Frank Waterhouse.)

A. (Continuing.) That represented my interest; that represented the amount the North Alaska Steamship Company had failed to pay on the steamer.

Q. Did you get \$37,000 in stock?

A. My recollection is that for some purpose, the capital stock of the Merchants' & Miners' Steamship Company was fixed at \$100,000.

Q. Yes—now, how much of that stock did you get for the interest in the steamer, outside of the \$30,000 cash?

A. It was fixed at \$100,000. The money that Mr. King paid in, the \$30,000—the money that was owing me, the \$37,000, was considered to be the indebtedness of the Merchants' & Miners' Steamship Company to Frank Waterhouse & Company. The money that Mr. King put in, the \$30,000 additional that he put in, was also considered to be an indebtedness to him of the Merchants' & Miners' Steamship Company, and a mortgage was given by the Merchants' & Miners' Steamship Company jointly to Frank Waterhouse & Company and W. F. King, for \$67,000, of which Mr. King had \$30,000 and Frank Waterhouse & Company had \$37,000 and interest.

(Testimony of Frank Waterhouse.)

Q. And the title to the ship passed to the Merchants' & Miners' Steamship Company?

A. Yes, sir.

Q. Did you receive any stock in the Merchants' & Miners' Steamship Company for the ship?

A. The stock never was issued of the Merchants' & Miners' Steamship Company.

Q. None was issued at all?

A. I do not think that it ever was issued, I do not think so.

Q. Practically, Frank Waterhouse & Company received the steamer back with a mortgage on her to Mr. William F. King of \$30,000, and a mortgage on her to Frank Waterhouse & Company themselves, or to you individually?

A. No; it is not so at all. Frank Waterhouse & Company did not receive the steamer back at all. The steamer was sold. Frank Waterhouse & Company had no further interest in the steamer except as their interest in the Merchants' & Miners' Steamship Company.

Q. What was the Occidental Securities Company's interest in the Merchants' & Miners' Steamship Company—you state in your pleadings that you received stock in the Merchants' & Miners' Steamship Company; now you say you did not—and that there was no stock issued.

(Testimony of Frank Waterhouse.)

A. I said the stock was not issued. If the stock had ever been issued I would have received it.

Q. How much stock would you have received if the stock had been ever issued, outside of the mortgage?

A. I think our share was \$62,500.

Q. Out of the \$100,000 capital stock?

A. Out of the \$100,000 capital stock.

Q. Now, the Merchants' & Miners' Steamship Company was incorporated after you got to New York on that trip in July?

A. Yes. After we left New York for Seattle.

Q. Do you know who would have got the remainder of the stock of the Merchants' & Miners' Steamship Company, if it had been issued?

A. Yes, the Meade Development Company.

Q. Who did it consist of?

A. I think it consisted of those men—Mr. King and his associates, that invested the money in the Occidental Securities Company, five or six of them.

Q. As a matter of fact, Frank Waterhouse & Company got for the steamer "Garonne" \$30,000 in cash to pay off the indebtedness.

A. No; the Merchants' & Miners' Steamship Company got the \$30,000.

Q. The Merchants' & Miners' Steamship Company did not owe anybody anything, did they?

(Testimony of Frank Waterhouse.)

A. The Merchants' & Miners' Steamship Company agreed to pay the debts of the North Alaska Steamship Company on the boat, and they received the money and paid the debts.

Q. Then they received for the boat—there was paid for the boat, whether you received it or not, \$30,000 which went to pay the claims on the boat.

A. Yes.

Q. That's right? A. Yes, sir.

Q. And in addition to that there was a mortgage of \$37,000 on the boat.

A. There was a mortgage of \$67,000.

Q. Of the \$67,000, \$30,000 was cash to pay the claims on the boat; now, who held the other \$37,000?

A. Frank Waterhouse & Company.

Q. And Frank Waterhouse & Company also held \$33,000 worth of stock in the Merchants' & Miners' Steamship Company.

A. It would have held that if it ever had been worth anything or ever had been issued.

Q. If it ever had been issued?

A. As a matter of fact that stock was so much water; it represented nothing.

Q. You became president of the Merchants' & Miners' Steamship Company? A. Yes, sir.

(Testimony of Frank Waterhouse.)

Q. And you are president yet?

A. The company is disincorporated.

Q. You entered the "Garonne" in the custom house, as owned by the Merchants' & Miners' Steamship Company, with yourself as president here in Seattle?

A. No, I think that she is not entered here in Seattle—she is entered in New York.

Q. Now, I want to be perfectly fair with you—

A. She was registered in New York.

Q. Now, I hand you that (showing paper to witness) and I will ask you what it is—and I would just as soon strike your answer which you have just given out if you find you are mistaken.

Mr. BOGLE.—I think I can explain all this better than Mr. Waterhouse can, because it all passed through my office.

A. (By the WITNESS.) I do not know anything about it; I know she was registered in the state of New York.

Q. (By Mr. KING.) I hand you plaintiff's identification No. 8, and I will ask you what it is.

A. It says that it is a copy of the certificate of registry.

Q. The register of the steamer "Garonne"?

A. Yes, sir, the steamer "Garonne" of New York.

(Testimony of Frank Waterhouse.)

Q. Turn over, and see whether it is duly certified on the back, by the customs officials.

A. Yes, sir.

Q. That says that you are the president of the Merchants' & Miners' Steamship Company?

A. Yes, sir.

Q. And that the "Garonne" is registered in their name? A. Yes, sir.

Q. And from the time that the "Garonne" was sold to the Merchants' & Miners' Steamship Company, up to the time she left these waters, she was in your control as president of that steamship company, wasn't she? A. Yes, sir.

Q. Do you recollect when the "Garonne" left here to sail for Alaska on June 2d, 1904?

A. I recollect when she sailed, I do not remember whether it was the 1st or 2d of June.

Mr. BOGLE.—It was either the 2d or 3d of June.

Q. (By Mr. KING.) From the time she sailed until she was surrendered to you by the North Alaska Steamship Company, had you received any money from the steamer, or from the North Alaska Steamship Company?

A. From the time she sailed?

Q. Yes. A. I think we had.

(Testimony of Frank Waterhouse.)

Q. And was that money credited up against the balance that was due on the purchase price?

A. Some of it, yes, sir.

Q. How much did you receive?

A. I could not tell you.

Q. Didn't you keep any account of it?

A. Certainly, but I cannot tell from memory.

Q. Have you got your book here?

A. Do you mean how much did we receive after she sailed—altogether do you mean?

Q. No; what I mean is this: You have stated in your answer the different sums of money which you received in part payment of the "Garonne"; you received something like \$47,000, didn't you?

A. Yes.

Q. Now, what I want to know is, did you receive any freight money, or anything of that kind after she sailed—was there any money remitted down to you from Alaska? A. No, sir.

Q. From any source, did you receive any money?

A. Yes, we did receive money after she sailed. We received the passenger money, north bound, from the agents here.

Q. You were the agent—Frank Waterhouse & Company were the agents?

A. Yes, but there were a lot of tickets sold by the North Alaska Steamship Company itself; that

(Testimony of Frank Waterhouse.)

money was turned into us; there was some tickets sold by E. E. Caine and that money was turned into us; and that money we credited on account of the North Alaska Steamship Company, either on the purchase or on their debt account with the boat, I forget which; but we received nothing after the steamer—now, I want to make myself perfectly plain here.

Q. And I want you to.

A. (Continuing.) We received nothing from collections in Alaska. We received no collections except those that were made here—paid in here before the steamer sailed. They may have come twenty-four hours after she sailed or two days after she sailed, but they were all the result of receipts here in Seattle. We never received anything from Alaska.

Q. Didn't you receive some freight money?

A. From Alaska?

Q. Yes. A. No.

Q. Didn't you receive \$500 or something like that amount?

A. Not that I have any knowledge of.

Q. Then the only money which you did receive was from the sale of passenger tickets here in Seattle. A. Yes, northbound.

(Testimony of Frank Waterhouse.)

Q. And no freight money at all?

A. Not a dollar that I know of. I would be very glad to look that up, and if we did receive anything from any source in Alaska I will advise you of it.

Q. Now, you represented the steamer as agents, previous to her sailing to Alaska on that trip?

A. Yes.

Q. And advertised her as sailing for the North Alaska Steamship Company with you as agents, in the daily papers.

A. Yes, sir.

Q. When you were in New York, in negotiation with the North Alaska Steamship Company, did you produce or show them any vouchers for this indebtedness?

A. Why, I think we took with us all the bills that we had received up to that time; I am not very sure about that.

Q. If you had not the bills, Mr. Waterhouse, how did you ascertain the amount that was due on the steamer?

A. We knew the amount that was due on the steamer before I left for New York, and after I got to New York we wired our treasurer and asked him to telegraph what bills had subsequently come in, and what up to that time was the amount of the North Alaska Steamship Company's debt against that steamer—what was the amount of the bills that

(Testimony of Frank Waterhouse.)

they had incurred against the steamer and not paid, and he replied to that—I have his telegram.

Q. And that is how you made up the amount that was due on the steamer.

A. Yes.

Q. Were those debts liens on the steamer?

A. Every one of them. I could not say every one of them, but nearly all of them. I think every one of them was, except commissions that were due Frank Waterhouse & Company and commissions due E. E. Caine. I think everything else was—I don't know whether they are maritime liens or not—everything else was.

Q. As agents for the steamer, you received a commission for the sale of tickets?

A. Yes, we received commissions.

Q. Frank Waterhouse & Company did?

A. Yes; we had a contract with the North Alaska Steamship Company at the time they purchased the steamer.

Q. Have you got any of those vouchers here?

A. I have a statement showing the bills that were paid with the money that was received in New York, with the \$30,000 that Mr. King and his associates paid in. I have not had an opportunity, as our treasurer has been ill, and I did not have the time

(Testimony of Frank Waterhouse.)

to get these until this morning (showing), There it commences, at July 19, and it runs right down there. There is almost \$30,000 there; and there are two or three thousand dollars that we had advanced money for, that appear in our books, before I made the arrangements in New York—bills that had to be paid, labor bills and things of that kind. Of course, we have all the vouchers for every dollar we spent on their account.

Q. You say you have got vouchers for all these?

A. We have got vouchers for every cent we ever expended on behalf of any company we ever represented.

Q. This page 20 of your ledger represents the account against the steamer "Garonne"?

A. That represents the indebtedness of the North Alaska Steamship Company.

Q. To Frank Waterhouse & Company?

A. No, to the steamer "Garonne," on July 19, 1904.

Q. And this credit here of \$30,000, is the \$30,000 received from the Merchants' & Miners' Steamship Company? A. Yes, sir.

Q. And these are the expenditures on it?

A. Yes; the \$30,000 was the money received from Mr. King and his associates, and that is the way the money was spent.

(Testimony of Frank Waterhouse.)

Q. You only received one \$30,000?

A. That is all. There are some prior expenses to that. These are the last expenses. There are some three or four thousand dollars, as I say, that appear in the books of the North Alaska Steamship Company. We had advanced money for them. That does not quite make up the \$30,000. As a matter of fact, there was some \$32,000 or \$33,000, or possibly \$34,000 of debts at that time.

Q. Why is the balance not in here?

A. Well, the reason for that I think is this. Our treasurer can explain it to you, but I think the reason is this—

Q. We do not care for the reason unless you know. You can get the treasurer here if he knows.

MR. KING.—I would like to offer this page No. 20 in evidence, of the Merchants' & Miners' Steamship Company's ledger, and ask to have it be marked as an exhibit. We will substitute a typewritten copy to be marked as exhibit No. 9.

(Document marked Complainant's Exhibit No. 9.)

Q. You have none of these vouchers here?

A. Not here.

Q. For these expenditures?

A. We have them in Seattle.

(Testimony of Frank Waterhouse.)

Q. But not in this hearing?

A. No.

Q. Referring to this Complainant's Exhibit No. 9, I will call your attention to the item of July 20th of \$ 2,036.07, and I will ask you what that is.

A. That is 5% commission.

Q. Just read it.

A. (Reading:) 5% commission on "Garonne" voyage No. 1, earnings.

Q. Frank Waterhouse & Company?

A. Yes, sir.

Q. That was paid to Frank Waterhouse & Company, incorporated?

A. Yes, sir.

Q. What is the next item, on July 21st of \$597.27?

A. Balance 2½% of 10% commission.

Q. Paid to whom?

A. Frank Waterhouse & Company, incorporated.

Mr. KING.—At this time, if there is no objection, I would like to put complainant's identification No. 8 in evidence.

(Document received in evidence and marked Complainant's Exhibit No. 8.)

Q. On July 9th, when you received word from the North Alaska Steamship Company that they practically threw up their contract on the "Garonne," where was the boat then, do you know?

(Testimony of Frank Waterhouse.)

A. I do not know.

Q. Hadn't she returned to Seattle?

A. I do not remember.

Q. What is your best recollection of when she did return to Seattle?

A. I have not the faintest idea—I haven't got the least idea.

Q. But you say you think it was two or three days after July 9th, 1904, before you consummated your sale with the Merchants' & Miners' Steamship Company?

A. Well, I would know if I knew what day of the week July 9th was, I think I could tell exactly what day of the month—it was either two or three days after.

Q. During that time, did you make any effort to sell the steamer to anyone else?

A. No. There was no use making any effort. I had been trying to sell this steamer for two years before, and had exhausted the world.

Mr. KING.—I move to strike that out as not responsive to the question.

Q. Whereabouts in New York did these negotiations take place?

A. They took place in the office of the Occidental Securities Company, at the Merchants' Association,

(Testimony of Frank Waterhouse.)

at Griggs, Baldwin & Baldwin, attorneys, at McKee & Frost, attorneys, and at the Holland House.

Q. Now, give the locations of some of those places in New York which you have testified about—where is Griggs, Baldwin & Baldwin's office?

A. On Pine street.

Q. And where is the Merchants' Association?

A. On Broadway.

Q. Whereabouts on Broadway?

A. I think it is No. 240.

Q. The lower part of Broadway?

A. Yes.

Q. Where is McKee & Frost's office?

A. No. 48 Broadway, or 42—42, I think it is.

Q. That is still very low down on Broadway?

A. Yes.

Q. And where is the Holland House?

A. On Fifth Avenue.

Q. Whereabouts on Fifth Avenue?

A. Fifth Avenue and 28th Street, I think.

Q. You are pretty well acquainted in New York?

A. Fairly.

Q. You have been there frequently.

A. I have been there four or five times a year.

Q. The numbering of the buildings in Broadway is consecutive, is it not; it is not like the numbering in Seattle, by blocks?

(Testimony of Frank Waterhouse.)

A. No, it is consecutive, I believe.

Q. So that No. 28 Broadway—

A. 42 Broadway I said.

Q. The office at 42 Broadway, from the way that Broadway is numbered, as you know, would be only twenty-one doors from No. 1 Broadway.

A. I said 48 Broadway.

Q. Would be twenty-eight doors from No. 1 Broadway? A. I do not know, Mr. King.

Q. Is it not a fact that the numbers run alternately, the even numbers on one side of the street, and the odd numbers on the other, and that they run up consecutively? A. I believe they do.

Q. Then No. 48 would be twenty-four doors from No. 1, but on the opposite side of the street—you know that, don't you?

A. I should think so, but I don't know it.

Mr. KING.—That is all.

Mr. BOGLE.—I have no cross-examination of this witness.

Mr. KING.—I would not like to close my case now; if there is no objection. I will say that I have no more witnesses, but I would like to read over this testimony before I close, if there is no objection.

Mr. BOGLE.—There is no objection.

(Testimony of witness closed.)

(Testimony of Frank Waterhouse.)

Whereupon it is stipulated and agreed by and between attorneys for both sides in open court that the witness need not sign the foregoing deposition, but that the same shall be considered of the same force and effect as if signed by said witness.

December 13, 1905, 4 o'clock P. M.

Continuation of proceedings pursuant to agreement. All parties present as at former hearing.

Mr. KING.—At this time the complainant desires to offer in evidence, as Complainant's Exhibit No. 9, the copy of page 20 of the Merchants' & Miners' Steamship Company's ledger that was furnished by the defendant.

(The copy above referred to is received in evidence and marked "Complainant's Exhibit No. 9.")

FRANK WATERHOUSE, recalled, testifies as follows:

Q. (Mr. KING.) Mr. Waterhouse, the mortgage you spoke of when you testified before as having been sent to the Chase National Bank, was the mortgage in which General Dodge was protected for his secondary interest of \$10,000.

A. I believe it was.

Q. Now, you stated at your previous examination that the stock in the Merchants' & Miners'

(Testimony of Frank Waterhouse.)

Steamship Company, or any stock, if it had been issued, was practically valueless? A. Yes.

Q. Didn't the company have any assets?

A. No, they had no assets, except the steamer "Garonne."

Q. And that asset was subject to a mortgage of \$67,000?

A. No. I made a mistake in reference to that when I testified the other day. I find there was no mortgage given at all.

Q. There was no mortgage given?

A. No.

Q. And how was the \$30,000 secured then?

A. The Merchants' & Miners' Steamship Company agreed to consider the \$30,000 paid in by Mr. King and his associates, and the \$37,500, or the thirty-seven thousand and odd dollars which was the balance due Frank Waterhouse & Company by the North Alaska Steamship Company—the unpaid balance due on the purchase price of the "Garonne"—as a debt of the Merchants' & Miners' Steamship Company to us. Now, the Merchants' & Miners' Steamship Company was capitalized for \$167,000. The reason for that was this: Mr. King and his associates insisted that they should have an equal interest with us, or with Frank Waterhouse & Company, in the management of the Merchants' &

(Testimony of Frank Waterhouse.)

Miners' Steamship Company; that they should have equal voting power; and in order to accomplish that, it was suggested by Mr. King's attorneys and agreed to by mine, that the capital stock of the Merchants' & Miners' Steamship Company should be \$100,000, which should be divided equally between Mr. King and his associates and myself, and that the amount of \$37,000 due me, and the amount of \$30,000 which Mr. King advanced to pay off the indebtedness against the "Garonne," should be considered as an indebtedness of the Merchants' & Miners' Steamship Company to us; so, the capital stock was not \$167,000, but \$100,000, I believe, with an indebtedness of sixty-seven thousand and odd dollars.

Q. Are you very positive that that indebtedness was not secured by a mortgage on the vessel?

A. Well, I am not absolutely positive, but I do not think it was. I have no recollection of it.

Q. I have here a statement from the Meade Development Company, in which it states, amongst their holdings; "See mortgage on the steamer 'Garonne,' \$30,000, security for cash advanced to the Merchants' & Miners' Steamship Company; total mortgage on vessel \$67,000"; are you prepared to say that that statement is incorrect?

A. I am not prepared to say it is incorrect; I think it is, but I do not remember; I never have seen

(Testimony of Frank Waterhouse.)

the mortgage that I know of, and I do not remember one ever being made.

Q. Were those parties, who are represented as having been paid by Complainant's Exhibit No. 9, pressing you for payment at that time you were in New York?

A. No, sir; we are not in the habit of being pressed for payment, because we always pay our bills as soon as they are rendered.

Q. As a matter of fact, the "Garonne" was put into the Merchants' & Miners' Steamship Company for \$100,000, wasn't it?

A. No, I do not think so.

Q. What price was it put in at?

A. I think it was put in at \$67,000, which was made up of the \$37,000 due me and the \$30,000 that was advanced by Mr. King and his associates.

Q. Then the Merchants' & Miners' Steamship Company, if there was no mortgage, was indebted to Mr. King for \$30,000, and to you for \$67,000.

A. To me for \$37,000.

Q. That is, if there was no mortgage?

A. If there was, they were indebted to us just the same.

Q. And in addition to that, outside of that, you received \$63,000, or you would have received \$63,000

(Testimony of Frank Waterhouse.)

worth of stock of the Merchants' & Miners' Steamship Company? A. No, I would not.

Q. How much stock would you have received of the Merchants' & Miners' Steamship Company?

A. I would have received \$50,000. Of course that stock had no value, and it was just arranged for the purpose of arranging an equal management—an equal share in the management between Mr. King and his associates and myself.

Q. Was the "Garonne" insured for the benefit of yourself and Mr. King and his associates?

A. It was insured for the benefit of the Merchants' & Miners' Steamship Company.

Q. Do you know what her insurance was?

A. No.

Q. Have you any idea? A. No.

Q. Do you know whether it was more or less than \$100,000? A. I do not remember.

Q. Can you ascertain? A. Yes.

Q. Will you do so, please? A. Gladly.

Q. Was there any of this indebtedness, which was set out in Complainant's Exhibit No. 9, which is page 20 of the Merchants' & Miners' Steamship Company's ledger, incurred after Mr. Pusey was in Seattle? A. I do not know.

Q. Did you call Mr. Pusey's attention, when he was in Seattle, to any indebtedness against the com-

(Testimony of Frank Waterhouse.)

pany at that time, other than the \$37,000 due on the purchase price? A. Yes.

Q. What indebtedness did you call his attention to?

A. I do not recollect, except that he was told that there was a large indebtedness to be paid. We did not know at the time what the indebtedness was, because we had not received the accounts either from the creditors themselves or a statement of them from the North Alaska Steamship Company.

Q. You never gave him any amount?

A. No; but he thoroughly understood, and was informed, that there was a large indebtedness to be taken care of.

Q. I call your attention to a bill from the Commercial Street Boiler Works, being the first item on exhibit No. 9, and I will ask you if that was work done on the "Garonne"? A. Yes, sir.

Q. By your order? A. No.

Q. By whose order?

A. By the order of the North Alaska Steamship Company.

Q. Did you represent the North Alaska Steamship Company in giving the order?

A. No, sir, I had nothing to do with it.

Q. Did you O. K. it?

(Testimony of Frank Waterhouse.)

A. Not that I am aware of (examines document). No, sir.

Q. Didn't you have an agreement with the North Alaska Steamship Company that no work was to be done, and no indebtedness was to be incurred against the ship without your sanction?

A. Yes, sir.

Q. Was this incurred without your sanction?

A. Yes, a great deal of it was.

Q. When did you first learn of this?

A. Subsequent to the June 1st of that year, 1904.

Q. I now hand you a bill of Frye-Bruhn & Company, being the second item there, and I will ask you whether you know whether that was furnished the "Garonne"?

A. Yes, sir.

Q. How do you know it?

A. Because it is O K-ed by their steward and receipted for by him.

Q. Was that furnished with your sanction?

A. I do not know but that we had knowledge that this order was placed. We might have placed the order for them ourselves—I do not remember. Frank Waterhouse & Company were acting as their agents.

Q. That is what I understood.

A. (Continuing.) —and if we ordered anything of this kind it was ordered on the order of their man-

(Testimony of Frank Waterhouse.)

ager here. Nothing was bought except on the order of their manager, for them.

Q. I understood you to say that the first bill you knew nothing about.

A. I have no personal knowledge of it at all.

Q. Are you not their manager?

A. No, sir. Mr. Ferguson was their manager. I was their agent. They had a manager here during all that time, a man in charge of the business.

Q. Did Mr. Ferguson have any authority from you to incur indebtedness against the "Garonne"?

A. Such items as we knew of—

Q. Is that your answer?

A. (Continuing.) —We were willing he should incur. I cannot tell you. I cannot go through that thing and tell you all the items we had knowledge of, because I haven't the slightest recollection except one or two cases.

Q. You say you cannot tell anything about what items, notwithstanding the fact that you say there was an agreement entered into between you, that no indebtedness should be incurred on the steamer without your knowledge and consent.

A. Yes, sir. That agreement was violated by them.

Q. I want to find out on what particular bills that agreement was violated?

(Testimony of Frank Waterhouse.)

A. I cannot say.

Q. Then, for all you know, all these bills may have had your consent.

A. I know they had not, for the reason that the indebtedness—after I left for New York—the indebtedness was increased from something like \$15,000 or \$16,000, the amount of bills we had at that time, to over \$32,000.

Mr. BOGLE.—Do you mean the indebtedness was increased, or that bills came in?

A. Bills came in that we had no knowledge of.

Q. For debts incurred prior to that, was it?

A. Yes, sir.

Q. (Mr. KING.) Now, I will ask you to look at this Kilbourne & Clark bill and tell me if you knew of that before it was incurred?

A. I do not remember it at all.

Q. It was work done on the “Garonne,” was it not?
A. Yes, sir.

Q. Could you tell whether it was done prior to or subsequent to June 2d, by looking at the bill?

A. No. There is nothing there to indicate when it was done. It must have been done prior, because the bill is rendered on June 2d.

Q. It was for overhauling the electrical system on the ship.

(Testimony of Frank Waterhouse.)

A. It looks like it.

Q. Do you know anything about the next item of King & Winge?

A. I do not know anything about any of these things personally—I cannot tell you anything about it. It was work on the “Garonne” evidently.

Q. That is work done on the “Garonne,” but you cannot tell whether that bill amounting to \$2,725.60, was incurred with or without your sanction.

A. I can't remember now.

Q. What about McCabe & Hamilton, stevedores?

A. That was for loading the ship.

Q. Was that incurred with your sanction?

A. I knew they were employing stevedores to load the ship, if that is what you mean.

Q. I would like you to answer my question, please.

A. Well, I cannot give you any more of an answer. I knew that the firm of McCabe & Hamilton were working there, but I do not know what the bill was or what hours they worked or anything of the kind.

Q. You had ample opportunity to protect yourself, and I want to find out to what extent you did it. Do you know anything about the bill of the South Prairie Coal Company for \$503.70—do you know whether that work was done on the ship?

(Testimony of Frank Waterhouse.)

A. No, it is evidently coal furnished the steamer by the South Prairie Coal Company.

Q. But you only know that by looking at the bill?

A. That is all.

Q. I have here a bill dated July 20, 1904 from Frank Waterhouse & Company, incorporated, against the North Alaska Steamship Company, which is included under date of July 20th, in the Complainant's Exhibit No. 9, and it is for commission on \$40,721.43. Did Frank Waterhouse & Company receive that money?

A. Yes, sir.

Mr. BOGLE.—Which money do you mean?

Mr. KING.—\$40,721.43.

A. (Continuing.) Did we receive that, did you say?

Q. Yes.

A. I do not know whether they did or not.

Q. Then why did you charge commission on it?

A. Because the North Alaska Steamship Company made a contract with Frank Waterhouse & Company that the latter should act as their general agents in securing cargo and passengers for the steamer "Garonne," for which service they were to be paid a commission of 5% on the gross earnings of the steamer "Garonne," which is the usual rate of commission.

(Testimony of Frank Waterhouse.)

Q. Then, none of this money came through your office? A. To us?

Q. The \$40,000.

A. Undoubtedly some of it did; what part of it I cannot say.

Q. You cannot say?

A. No, I do not remember.

Q. Have you any means of finding out?

A. Certainly. Maybe, perhaps, all of it did.

Q. If any of the money did come to your office, what was done with it?

A. Turned in to the cashier.

Q. What was done with it in reference to the North Alaska Steamship Company?

A. It was applied on the bills of the North Alaska Steamship Company.

Q. Applied on the bills? A. Yes, sir.

Q. And applied on their indebtedness to you—any of it.

A. I think there was, yes, sir, I do not know what amount.

Q. You are not prepared to say that this whole \$40,721.43, did not go through your office, which you charged commission on?

A. That it did not?

Q. Yes.

A. Do you mean that it never reached our office?

(Testimony of Frank Waterhouse.)

Q. No; I mean just exactly what I said; that it did not go through your office.

A. I don't understand your question.

(Question repeated to the witness.)

A. The North Alaska Steamship Company had its own office in Seattle. It was selling—

Mr. KING.—Wait a moment—I asked for a categorical answer to my question.

The WITNESS.—I cannot give you one then. You do not ask a question which I can answer categorically.

Mr. BOGLE.—I think he has the right to answer the question.

The MASTER.—Complete your answer.

A. (By the Witness—Continuing.) The North Alaska Steamship Company had an office; retained an office in the city of Seattle, in which it engaged freight and received the payments, and the charges on the same, and for the sale of passenger tickets, in which it received the proceeds of the sale of those tickets. Now, a portion of this \$40,000 was paid in through that office, and possibly all of it was subsequently turned into our office, but what part of it, or if all of it, I cannot say; I do not remember.

Q. The question I asked you was—you are not

(Testimony of Frank Waterhouse.)

prepared to say that this whole \$40,721.43 did not go through your office, which you charged commission on; or, can you by reference to the books of Frank Waterhouse & Company, incorporated, ascertain how much of it passed through your office, and how much did not?

A. I do not know whether I can or not.

Q. Then, do I understand you that you wish the record to show that you kept no account of this—Frank Waterhouse & Company?

A. I cannot say whether we kept the books of the North Alaska Steamship at that time, or whether they were being kept in their own office.

Q. Do I understand you then, that none of this \$40,000 went through the books of Frank Waterhouse & Company, incorporated?

A. No, sir, I do not think it did.

Q. It did not?

A. I do not think it did; unless, after it was paid over by the North Alaska Steamship Company to us as a payment on the purchase price of the "Garonne," if any part of it was so paid, then it would appear in the books, that part that was so paid.

Q. Where are the books of the North Alaska Steamship Company, have you got them?

A. I think the books are in New York.

Q. They are not here?

(Testimony of Frank Waterhouse.)

A. I do not think so.

Q. You have not got them?

A. I do not know; if we have you are very welcome to them.

Q. Do I understand you that on money received by the North Alaska Steamship Company on the "Garonne" that was not received by or through your office, and never passed through Waterhouse & Company, incorporated, that nevertheless, you got a commission of 5% on it?

A. We got a commission of 5% on the gross earnings of the steamer from the money—wherever the money passed through, whether it was our office or their office.

Q. That was what I asked you.

A. Yes, sir.

Q. Then, if a part of this money was received by the North Alaska Steamship Company direct, and used by them or appropriated by them in any way, you would, nevertheless, receive a commission of 5%, if it was on the earnings of the "Garonne"?

A. Yes, sir.

Q. But at the same time you do not know how much of the \$40,000 passed through the office of Frank Waterhouse & Company, and how much did not?

A. No, sir.

(Testimony of Frank Waterhouse.)

Q. But you do know that any that did, was applied by you in payment of either the indebtedness of the North Alaska Steamship Company to you or in the payment of bills, is that right?

A. Yes, sir.

Q. Now, I have here a bill, shown on exhibit No. 9, of July 21st, 1904; the North Alaska Steamship Company to Frank Waterhouse & Company; this is $2\frac{1}{2}\%$ on disbursements; the disbursements given at \$32,578.13, and the $2\frac{1}{2}\%$ commission at \$814.45. Was that for money disbursed by Frank Waterhouse & Company on account of the North Alaska Steamship Company? A. Yes, sir.

Q. Was there an account of that kept by Frank Waterhouse & Company?

A. An account of the commissions?

Q. No, sir; an account of those disbursements?

A. Yes.

Q. Do you know what those disbursements were for? A. No, sir.

Q. Can you ascertain from your books?

A. Yes, I can send our cashier down here and let him give you all the information you want. I did not keep those books.

Q. How did you receive this money; from what sources—this \$32,578.13? A. I do not know.

Q. Do your books show? A. Certainly.

(Testimony of Frank Waterhouse.)

Q. Do you know anything about this bill of the Western Union Telegraph Company for \$64.66?

A. No, sir.

Q. You do not know whether it was for telegrams?

A. It was for telegrams, evidently.

Q. You do not know anything more than what the bill shows? A. No, sir.

Q. I have here a bill of Frank Waterhouse & Company against the North Alaska Steamship Company of June 14th, 1904, for proportion of insurance from February 14 to May 30, on policy for \$75,000 on steamer "Garonne," three and a half months' premium, \$382.83 (showing); that was insurance at that time on the "Garonne," was it?

A. It was the insurance from the time they bought her up to this time—from the time the North Alaska Steamship Company bought the steamer from us.

Q. That insurance was negotiated through the office of Frank Waterhouse & Company?

A. It was negotiated months before; it was a year's insurance; taken out long before that time.

Q. It was taken out through your office?

A. Yes.

Q. Was there any other insurance on the boat at that time besides that? A. I could not say.

(Testimony of Frank Waterhouse.)

Q. In addition to that?

A. I do not remember.

Q. You would not say there was not?

A. No, sir.

Q. I now hand you a number of bills from Sunde & Erland and aggregating, according to exhibit No. 9, \$429.83, and I will ask you whether you know whether or not those were incurred with your knowledge and consent for the steamer "Garonne" (showing).

A. No, I never saw them—I never heard of them before.

Q. You just simply paid those bills as they came in out of this \$30,000, without any investigation as to whether they were put on the vessel or not?

A. No, we did not. They were all O K-ed by their representative—every bill. We never paid a bill unless it was thoroughly approved by the proper officers.

Q. Who were the officers that approved these Sunde & Erland bills?

A. W. B. Hastings.

Q. Who is W. B. Hastings?

A. He was the assistant traffic manager of the North Alaska Steamship Company in Seattle.

(Testimony of Frank Waterhouse.)

Q. When you found these bills were coming in without your sanction and consent, did you make any objection?

A. Most of them came in after it was too late to make any objection.

Q. After when—after July 12th?

A. After the vessel sailed, on June 1st.

Q. Did any come in after July 12th?

A. I do not remember.

Q. If they did they will so show in this statement (showing)—the dates in that statement, so far as you know, are correct, Mr. Waterhouse?

A. Those are the dates of payment. I do not know when the bills came in.

Q. You do not know when they came in?

A. No.

Q. You do not know whether this Mr. Hastings represented the North Alaska Steamship Company after July 12th, 1904? A. I do not remember.

Q. You do not know whether that O. K. was put on the bill before or after that time?

A. (Examining bill.) Yes; it was paid here on July 13th; it was marked with the stamp paid July 13th.

Q. Well, here is one July 23d, now how about that one?

(Testimony of Frank Waterhouse.)

A. Well, these O K's were put on before the bills were paid, of course.

Q. You do not know whether they were put on after July 12th or not?

A. I do not know. The chances are they were put on before we received those bills in our office at all. Everything—

Q. (Interrupting.) That is only a conjecture on your part.

A. Well, I can soon find out whether they were or not.

Q. I have here a bill of June 14 of J. R. Mason to Frank Waterhouse & Company, steamer "Garonne," Western Policy No. 2672, \$75,000; Western Policy 2672 (the same number) \$37,500. Was that insurance for the "Garonne"? A. Yes, sir.

Q. Was that in addition to the insurance which was negotiated through your office?

A. To the best of my recollection this insurance was taken out when the other expired; the other was the Harbor Risk, and this was the Sea Risk.

Q. Well, here is another bill of July 23d, 1904, dating from June 1st, to premium on maritime policy 2,000 pounds, 9,500 pounds and 1,000 pounds, total 12,500 pounds—does that mean pounds sterling?

A. Yes, sir.

Q. That also was insurance on the "Garonne"?

(Testimony of Frank Waterhouse.)

A. Yes, sir. All that insurance was taken out on the "Garonne" under the instructions and at the instance of the North Alaska Steamship Company.

Q. It was partly to protect you for your interest in the ship, wasn't it?

A. It was partly to protect them against the debt that they owed us.

Q. You had an interest in the insurance to the extent of what was due on the ship?

A. Certainly.

Q. I hand you a bill of M. Seller & Company, dated June 25th on exhibit No. 9, for \$387.50 for glassware and articles of that kind, and I will ask you whether you know whether that went on the steamer "Garonne"? A. I presume it did.

Q. But you do not know? A. No.

Q. Whose O K has that Seller bill got on it?

A. It does not seem to have anybody's.

Q. There is a bill of July 26th, 1904, from E. E. Caine, for commission on sale of tickets, \$17,845, 5% \$892.25; do you know anything about that (showing)?

A. Those were the tickets—that represented commission of 5% on tickets sold by E. E. Caine, under agreement with Mr. Ferguson, the general traffic manager of the North Alaska Steamship Company.

(Testimony of Frank Waterhouse.)

Q. You do not know what disposition Caine made of the \$17,845. A. Yes.

Q. What did he do with it?

A. He remitted it to us—accounted for it to Frank Waterhouse & Company.

Q. And you credited it to the North Alaska Steamship Company? A. Yes, sir.

Q. Why didn't he take his commission out before he remitted it?

A. I do not remember, sometimes it is done that way.

Q. Is it not customary—

A. No. I forget what the reason was. Sometimes it is and sometimes it is not.

Q. I have got here a bill of O. A. Johansen, master of the ship, dated August 1st, and he claims from July 1st to the 9th inclusive, nine days, at \$250 a month, \$75; July 10th to the 15th inclusive, seven days, at \$125 a month, \$29.17; sixteen days' board at \$1.50, \$24, making a total of \$128.17. Do you know anything about that?

A. Yes, I know all about it.

Q. Was he the master of the ship?

A. Yes; he was the master of the ship and he was paid up according to his contract with the North Alaska Steamship Company made by Mr. Ferguson;

(Testimony of Frank Waterhouse.)

and that payment was made by myself, on my order, on the strength of his contract with that company.

Q. But he did not work for the North Alaska Steamship Company after the 12th of July, did he?

A. Yes, I understood he was by the boat up to the time he was paid off.

Q. But the boat did not belong to the North Alaska Steamship Company after the 12th of July.

A. He was hired by the North Alaska Steamship Company, and remained in the employ of the North Alaska Steamship Company.

Q. Then the North Alaska Steamship Company provided Mr. Johansen to stand by the boat at the time the boat did not belong to them.

A. Let me see the dates (examining document). This receipt is "Received from the Merchants' & Miners' Steamship Company \$128 in settlement of services as master of the steamer 'Garonne.'"

Q. It is part of the \$30,000 which you claim that the North Alaska Steamship Company was owing to you.

A. It owed us \$32,000.

Q. No, it didn't—it shows a balance of \$1,437.51, a credit balance. Now, do I understand you that any of this thirty or \$32,000 which, when you were in New York, you were claiming was owing to you by the North Alaska Steamship Company—that any of

(Testimony of Frank Waterhouse.)

that is for bills or services or anything else rendered to the steamer "Garonne" after she became the property of the Merchants' & Miners' Steamship Company? A. No, sir.

Q. Then how do you explain Johansen's bill?

A. Because there are other items paid, which would go to make up more than \$30,000, and more than \$34,000, which are not included in that statement at all.

Mr. BOGLE.—It is only four days over the twelve days in that bill.

Q. (Mr. KING.) There is the bill of Lewis, Foard, Anderson & Company, dated May 25th, and it was paid on August 5th, "Steamer 'Garonne' and owners, \$161.50"; do you know anything about that, Mr. Waterhouse?

A. I know that the bill is rendered for blocking furnished the "Garonne" which is receipted for by the chief officer.

Q. I hand you the Pacific Coast Coal bills appearing in exhibit No. 9, under date of August 4th, making a total of \$4,271.45; do you know anything about that? A. No.

Q. Or did you know anything about it before it was paid? A. I knew it before it was paid.

Q. Was it sanctioned by you?

(Testimony of Frank Waterhouse.)

A. The payment of it?

Q. No, sir, the incurring of it—did you know that that amount of coal went on the “Garonne”?

A. I don’t know.

Q. That bill is not O K-ed by anybody?

A. Well, the bunker receipts will be; that bill would not be O K-ed probably.

Q. There is no bunker receipt here—now, I hand you a number of bills and statements of the Seattle Hardware Company against the steamer “Garonne,” aggregating \$1,788.83, and I will ask you whether you know anything of them.

A. I know that it was for goods and materials furnished the steamer “Garonne,” and the bills are all approved by the chief engineer of the steamer and the master of the steamer.

Q. Who was the chief engineer of the steamer?

A. P. L. Plaskett.

Q. Who is John Gorgensen?

A. John Gorgensen is our port captain at the present time.

Q. What relation does he bear to the “Garonne,” if any?

A. He was employed by the North Alaska Steamship Company to superintend the work that was being done on her at that time, loading cargo and looking after her, acting as marine superintendent.

(Testimony of Frank Waterhouse.)

Q. I find here a bill of the Seattle Hardware Company of the 7th of May, 1904, a total of \$238.13, and I will ask you who that is O K-ed by.

A. Well, I don't know; in all probability it appears in some other statement. That page is O K-ed by nobody. That is not all unusual, because it probably appeared in some other statement where it is O K-ed.

Q. Well, I only asked you about this, because you claim to have so little knowledge of those bills—and to find out whether you paid bills which you knew nothing at all about.

A. Mr. King, I have a large establishment up there, and I do not look after the details of all this work. I do not pay those bills personally or look after those things.

Q. That may be, but you have had every opportunity here to bring anybody about your establishment who does.

A. I have done everything you asked me.

Mr. KING.—And we have done everything we could to get the information.

The WITNESS.—I beg your pardon.

Mr. BOGLE.—I want the record to show that there was no call for anybody except Mr. Water-

(Testimony of Frank Waterhouse.)

house personally. I suggested to Mr. King to bring the bookkeeper and cashier down here, and we will offer now that he can have here anybody in the establishment that he desires.

Mr. KING.—I accept the offer. At the last hearing Mr. Bogle told me that he would have the cashier down here; that he knew more about the bills than Mr. Waterhouse.

Mr. BOGLE.—And you told me that you wanted to ask Mr. Waterhouse some questions, and that is the reason that I brought him.

Mr. KING.—That need not have prevented you from bringing the cashier.

Mr. BOGLE.—What is the use of his sitting here while you are examining Mr. Waterhouse? All I want is to have this record appear that we have offered and you can have the cashier or bookkeeper or anybody you want here with reasonable notice so that he can arrange his business.

Q. (Mr. KING.) You do not know anything about that any more than you did of the others (showing)?

A. No, sir.

Q. I mean by that that you do not know anything more about the bills of this Standard Furniture Company.

(Testimony of Frank Waterhouse.)

A. No, sir, except that it is O K-ed by the steward before it was paid.

Q. Nor the bill of Schwabacher Bros. Company (showing)?

A. Those are bills for supplies furnished the steamer "Garonne" and paid by us after they were properly O K-ed by the superintendent and steward.

Q. What is the nature of those supplies?

A. Food supplies.

Q. Here is a bill of O. A. Johansen from July 17, to August 2d, sixteen days at \$125 per month, \$66.67; sixteen days' board, \$1.50 per day, \$24, making \$90.67, which you have included in your statement as per Complainant's Exhibit No. 9. At the time that that bill was incurred the "Garonne" was not the property of the North Alaska Steamship Company, was she? A. What dates again?

Q. July 17th to August 2d, 1904.

A. July 17th to August 2d?

Q. Yes. During those dates the "Garonne" was not the property of the North Alaska Steamship Company.

A. No, sir. That bill has evidently got in there by mistake. It does not show it was paid by the North Alaska Steamship Company, but by the Merchants' & Miners' Steamship Company.

(Testimony of Frank Waterhouse.)

MR. KING.—We move to strike that out as not responsive to the question.

MR. BOGLE.—He has the right to make an explanation if he wants to.

Q. (MR. KING.) The last claim that I have here is P. B. McLeod for \$300; can you explain anything as to that (showing)?

A. Yes. This amount of \$300 was paid to P. B. McLeod in settlement of his account against the North Alaska Steamship Company of \$786.34 for services performed as agent for the North Alaska Steamship Company at Nome, for lightering services for them and for certain advance charges made by Mr. McLeod on account of the North Alaska Steamship Company, which the officers of that company failed to pay him for.

Q. Had you any dispute with McLeod about that matter?

A. We tried to get out of paying it, and we finally settled it, on the advice of our counsel.

Q. Did you settle it with the knowledge and consent of the North Alaska Steamship Company, or any of its officers or agents?

A. We settled it with the knowledge of the agents and the officers of the North Alaska Steamship Com-

(Testimony of Frank Waterhouse.)

pany. Captain Ferguson was talked to about it, and Mr. Hastings, also.

Q. What officer was Captain Ferguson?

A. He was the manager here, and Mr. Hastings was the assistant manager, and his title was "General Traffic Manager."

Q. How long was Captain Ferguson manager?

A. He was manager from the date the North Alaska Steamship Company bought the steamer until the steamer was turned back to Frank Waterhouse & Company?

Q. And then he ceased to be manager?

A. Yes, sir.

Q. Yet this bill was paid on January 31st, 1905.

A. Yes, sir.

Q. That was long after the steamer was turned back?

A. Certainly.

Q. Was he manager then?

A. No, sir. We got all the information from him regarding it.

Q. Then there was really no officer of the North Alaska Steamship Company here in Seattle when that bill was paid.

A. I don't know whether there was or not. There was no officers of the North Alaska Steamship Com-

(Testimony of Frank Waterhouse.)

pany at that time, I think, both Mr. Hastings and Captain Ferguson were here at the time it was paid.

Q. But they were not officers of the steamship company at that time?

A. The North Alaska Steamship Company was not in existence, as far as I know at that time.

Q. What knowledge of this bill had you when you were in New York, on or about July 9th to the 12th, 1904?

A. I did not have any.

Q. Then why was it included in the \$32,000 which you claim was due you?

A. As I told you, there are a lot of other bills in addition to this included there that were included—or by which this \$30,000 was made up.

Q. Wasn't that just a lump sum, and a guess?

A. No, it was not. We telegraphed to our treasurer here when we were in New York at this time, about the 6th or 7th, or early in July, 1904, and asked him what the amounts of the bills were that he had received up to that time against the steamer "Garonne," incurred by the North Alaska Steamship Company. I have a copy of his telegram in which he states either \$30,000 or \$32,000—thirty-two thousand and some odd dollars.

Q. Have you got that telegram here?

A. I have got it up home, and I can bring it down to you.

(Testimony of Frank Waterhouse.)

Q. And to make up that \$30,000 you put in all those other bills? A. To make up what?

Q. To make up the—to make good his telegram.

A. It is a lien against the ship and what were we going to do with it.

Q. It is not demonstrated that it is any lien.

A. We were advised by counsel that it was a lien against the ship, and we paid it on those grounds.

Q. If it was a lien on the ship, then it was a lien against the ship when it was the property of the Merchants' & Miners' Steamship Company.

A. No; it was a lien against the ship when she was the property of the North Alaska Steamship Company.

Q. But you took the steamer back in settlement of all the debts, and you so testified, and you got \$37,000; you had a settlement of all that, you testified about that.

A. We didn't have a settlement at all—I don't know what you mean.

Q. You testified so—you took it all back for \$37,000.

Mr. BOGLE.—His testimony was that he took the ship back and undertook to pay the bills which were liens against it, which, of course, he had to pay, and

(Testimony of Frank Waterhouse.)

he raised money from Mr. King to pay it, and not from the North Alaska Steamship Company.

Q. (Mr. KING.) You say you do not know whether any of the money which you received, or that Frank Waterhouse & Company received, from freight or passenger money, was applied on the payment of the purchase price of the vessel.

A. I said I thought some of it was.

Q. Now, can you tell me what money you got from New York that was not freight or passenger money, on account of the purchase price of the vessel?

A. I do not remember, no.

Q. Have you any means of ascertaining?

A. Certainly I have.

Q. Will you ascertain?

A. I will be very glad to. I can give you all the information on the matter you want.

Q. You did receive something like \$35,000 from the Occidental Securities Company, didn't you?

A. I do not remember. I think we did, however; I think we received that amount from them, or something like that.

Q. You also received, in the neighborhood of \$15,000 in cash from New York, didn't you?

Mr. BOGLE.—Do you mean in addition to the \$35,000?

(Testimony of Frank Waterhouse.)

Mr. KING.—Yes, in addition to the \$35,000.

A. I do not remember.

Q. Prior to the \$35,000? A. No, sir.

Q. Eh? A. No, sir.

Q. You did not?

A. No, sir, I think the first payment we received in New York was the \$1,000, and the next, I think, if I recollect, was \$24,000.

Q. It was not \$14,000?

A. I do not remember, I will be very happy to furnish you a statement showing exactly what we received, when we received it, and from what sources.

Q. Now, when could you furnish that statement—now, I am asking you that for the reason that Mr. Bogle tells me that you are going away and we desire to close this case.

Mr. BOGLE.—If you will make out a list of just what you want from the books we will furnish them at any time you want it.

Mr. KING.—It is hard for me to tell what I want. I am in a position here of examining the defendant himself who is, of course, an adverse witness as far as I am concerned, and I cannot have any consultation with him beforehand, as I could with an ordinary witness, and it is very hard for me to tell just what I want.

(Testimony of Frank Waterhouse.)

The WITNESS.—As far as I am concerned, you can come and consult with me and I will show you every voucher up there in the office—everything you want.

Mr. KING.—I have asked for that. I want to find out how much money was received from the North Alaska Steamship Company from any source, and what disposition was made of it.

Mr. BOGLE.—If that is what you want I will have Mr. Townsend make up a full statement showing every item. Now, if there is anything else you want, if you can foresee anything else, we would be very glad to furnish it, and we will have Mr. Townsend here for you to examine, if you want any details as to any of the items.

Mr. KING.—I desire to be sworn.

GEORGE H. KING, appearing as a witness in behalf of complainant, being first duly cautioned and sworn, testifies as follows:

Mr. KING.—I simply want to testify that I am the attorney for the complainant in this suit; that I have lived in Seattle some sixteen years. During that time I know the “Post-Intelligencer” to be a daily newspaper published daily in the city, and that I personally took the extract, or copy, which I offer

in evidence, and ask that it be marked as "Complainant's Exhibit No. 10," from the Seattle "Post-Intelligencer," running from May 25th to June 2d, 1904.

(Document identified by the witness received in evidence and marked "Complainant's Exhibit No. 10.")

(Testimony of witness closed.)

10 January, 1906, 10:00 A. M.

Continuation of proceedings, pursuant to adjournment; all parties being present as heretofore.

Mr. KING.—I offer in evidence Plaintiff's Exhibit "11," which is admitted by the defendants to be a correct copy of the telegram received by Mr. Waterhouse in New York, concerning the indebtedness against the steamship "Garonne," as mentioned in his testimony.

(The document is here received in evidence and marked "Plaintiff's Exhibit 11.")

I offer in evidence Plaintiff's Exhibit No. "12" also numbers "13," "14," "15," and "16," which are sundry vouchers furnished me by the defendants, and are parts of the items mentioned in Plaintiff's Exhibit "9." It is stipulated between counsel that counsel for the defendants can withdraw any

of these exhibits on furnishing a copy to the Court of the Master; is that all right, Mr. Bogle?

Mr. BOGLE.—Yes, that is satisfactory.

(The documents are here received in evidence and marked respectively as indicated in the offer.)

Mr. KING.—I offer in evidence Plaintiff's Exhibit "17," being a bill furnished me by Mr. Waterhouse of the services of O. A. Johnson as master of the steamship "Garonne."

(The document is here received in evidence and marked "Plaintiff's Exhibit 17.")

I offer in evidence Plaintiff's Exhibit "18," being sundry bills mentioned and described in Plaintiff's Exhibit "9." The same stipulation as to withdrawal relates to these as to the other things.

(The documents are here received in evidence and marked "Plaintiff's Exhibit 18.")

I offer in evidence Plaintiff's Exhibit No. "19," being a statement of the receipts and disbursements made by Frank Waterhouse & Co. on account of the steamer "Garonne," from 3 February, 1904, until the sale of the ship to the Merchants' and Miners' Steamship Company, being all receipts and disbursements not included in Plaintiff's Exhibit "9."

(The document is here received in evidence and marked "Plaintiff's Exhibit 19.")

JOHN JORDISON, a witness produced in behalf of the complainant, being first duly sworn, testified as follows:

Q. (By Mr. KING.) State your name.

A. John Jordison.

Q. Where do you reside? A. At Seattle.

Q. How long have you resided there?

A. Off and on about twenty years.

Q. What is your business?

A. Superintendent for Mr. Waterhouse, and pilot.

Q. Are you now in the employ of Frank Waterhouse & Co.? A. Yes, sir.

Q. Do you know the steamship "Garonne"?

A. Yes, sir.

Q. And did when she was in these waters?

A. Yes, sir.

Q. Were you employed by the Northern Alaska Steamship Company during the spring and summer of 1904? A. Yes, sir.

Q. In connection with the steamer "Garonne"?

Q. I call your attention, Captain, to an item of disbursements in Plaintiff's Exhibit "19" and of date 7 March, 1904, "Labor and Material, February, \$982.13"; can you tell me what that is for?

(Testimony of John Jordison.)

A. March 7th; well, no; not from here, not unless I see the bills.

Q. Have you no general idea, captain, as to what it was for?

A. Well, there was labor and material furnished on that ship; there was sheathing laid on her deck and a lot of rooms fixed up; a lot of labor employed on the ship, in the way of sailors, firemen, coal-passers, different people in the steward's department but whether that applies to this I can not tell.

Q. Is that your answer to the April 7th item, "Labor and Material, March, \$1,096.90?"

A. Yes, sir.

Q. And also to the item of May 5th, "Labor and Material, April, \$1,076.90?"

A. Yes; may be it is payrolls, for all I know.

Q. Who were employed in the ship at that time, to the best of your recollection?

A. Oh, I could not say.

Q. I mean how big a crew; I don't mean all their names.

A. I think we had something like thirty men aboard at that time.

Q. What were they doing?

A. Cleaning; the stewards' crowd was cleaning the cabins, and the engineers' crowd was cleaning the boilers and the engine-room, the bilges, and all

(Testimony of John Jordison.)

that; and they had men on the deck, scraping and painting.

Q. You had that number of men during February, March, and April, 1904?

A. To the best of my knowledge, that is what it applies to.

Q. Take now the item of 31 May; "W. H. Morris, account painting, \$622.10"; how about that?

A. Yes, sir; that was painting in the cabins.

Q. Right under it here; "Victoria Dry Docking account, \$1,979.31"; do you know what that was?

A. Docking the ship and scraping and painting her, from the water-line down.

Q. Where?

A. In Esquimalt drydock.

Q. Was anything else done to her at that time, except scraping, painting, and cleaning her?

A. I think some bolts put in the rudders and strainers for the suction pipes.

Q. In fact, a general overhauling of the under-water body of the ship? A. Yes, sir.

Q. Now right below that—here—"Funds advanced Captain Jordison for payment laborers, \$4,856.00." A. Yes, sir.

Q. Well, what do you know about that?

A. Well, I would not say as to what it is, unless I saw the vouchers for it.

(Testimony of John Jordison.)

Q. You can not say what it is from memory?

A. No, sir, I cannot; I could not—the items of it.

Q. Have you any ideas as to what time that expenditure was made; over what times—how long—these wages extend?

A. No, I could not say.

Q. I call your attention to this item of 9 June—here on the next page—“S. S. ‘Garonne,’ repairs and port expenses, C. M. Shaw & Co., on account, \$800.00.”

A. That was the plumber.

Q. That was for plumbing and repairs on the ship?

A. Plumbing and repairs on the ship; yes, sir.

Q. On 18 June; “S. S. ‘Garonne,’ repairs and port expenses, King and Winge on account, \$1,000.00”; what was that?

A. King & Winge sheathed the deck and fixed up a lot of staterooms—and other repair work; boats, and one thing and another.

Q. Boats; do you mean life-boats?

A. Yes, sir; and fixed up a lot of new state-rooms, tore out the bathrooms, and one thing and another.

(Testimony of John Jordison.)

Q. On the 21st: "S. S. 'Garonne,' repairs and port expenses, Northwestern Improvement Co., \$425.49"; what do you know about that?

A. Could not swear about that unless I saw the vouchers.

Q. What do you think it was for, or do you know what it was for?

A. Payrolls, probably, or materials.

Q. What did the Northwestern Improvement Company do; that is what I want to get at.

A. Was not that the name of the concern at that time?

Mr. BOGLE.—What concern?

A. The Northwestern Improvement Company, was not it?

Mr. BOGLE.—I do not know.

Q. (By Mr. KING.) Then you do not know what that Northwestern Improvement Company item was for?

A. No, I could not very well say, unless I saw the vouchers.

Q. Now, this item of 15 July: "C. M. Shaw & Company, \$1295.78"; what was that?

A. Well, he is a plumber and pipe-fitter.

Q. That was plumbing and pipe-fitting done on the ship? A. Yes, sir.

(Testimony of John Jordison.)

Q. When did you take charge of the ship for the Northern Alaska Steamship Company?

A. I could not remember the date now.

Q. Well, what month?

A. I think it was in May; somewhere about then.

Q. Was not it in February?

A. Well, I could not call it to mind now; I have been with her so many years, I could not tell just what month it was, because I did not pay any particular attention to who the company was she was operated under; I was working for Mr. Waterhouse.

Q. You were not working, then, for the Northern Alaska Steamship Company?

A. Working just the same as I was right along.

Q. Were you on the ship in February, 1904?

A. Yes, on her off and on.

Q. Can you tell me what was done to the ship between February, 1904, and the time she sailed for Alaska on her first trip?

A. Oh, general overhauling, repairs, cleaning.

Q. Tell us about the repairs.

A. There were new staterooms put in her; the deck was sheathed; and cleaning and painting was done on her.

Q. Were there any repairs to the engines or machinery?

(Testimony of John Jordison.)

A. Yes, sir.

Q. What was the nature of them?

A. I could not describe that all; because Mr. Prescott had charge of that.

Q. About how long were they working on them?

A. He had men there two or three months, cleaning.

Q. There were pretty thorough repairs made?

A. Yes, she was put in shape to go to sea.

Q. When she left here on June 22d?

A. Yes, sir.

Q. Do you know what the aggregate cost of those repairs was? A. I could not call it to mind now.

Q. Would you say it amounted to \$15,000.00 to do that work?

A. I think they would cost more than that; pay-rolls, and bills, and one thing and another.

Mr. KING.—That is all.

Mr. BOGGLE.—That is all.

(Testimony of witness closed.)

(Whereupon it is stipulated between counsel, in open court, that the signature of the witness to the foregoing deposition may be waived, and that said deposition shall be of the same force and effect as if signed by said witness.)

Mr. KING.—We offer in evidence Plaintiff's Exhibit "20," which was furnished by the defendants and is admitted to be a correct statement of the amount of insurance on the steamer "Garonne," from 1 July, 1904, to 8 April, 1905.

(The document is here received in evidence and marked "Plaintiff's Exhibit 20.")

We offer in evidence Plaintiff's Exhibit No. "21," furnished me by the defendants, and admitted to be a correct copy of an agreement entered into on 9 July, 1904, between W. F. King of New York City and Frank Waterhouse of Seattle.

(The document is here received in evidence and marked "Plaintiff's Exhibit 21.")

It is admitted on both sides that the Merchants' and Miners' Steamship Company was incorporated in the State of New York on 12 July, 1904, with a capital stock of \$100,000.00.

Mr. BOGLE.—Yes.

Mr. KING.—I offer in evidence Plaintiff's Exhibit "22," being a certified copy of the bill of sale of the steamer "Garonne," from Frank Waterhouse and Company, incorporated, to the Merchants' and Miners' Steamship Company of New York, and the certificate of the customs-house at New York as to the certified copy.

(The document is received in evidence and marked "Plaintiff's Exhibit 22.")

I offer in evidence Plaintiff's Exhibit "23," being a certified copy of the bill of sale of the steamship "Garonne" from the Merchants' and Miners' Steamship Company of New York to the White Star Steamship Company of Seattle; together with the certificate on the back.

(The document is here received in evidence and marked "Plaintiff's Exhibit 23.")

Plaintiff rests.

Tuesday, April 17th, 1906, 2 P. M.

Continuation of proceedings pursuant to agreement.

FRANK WATERHOUSE, defendant, produced as a witness in behalf of defendants, being first duly cautioned and sworn, testifies as follows:

Q. (Mr. BOGLE.) Mr. Waterhouse, you are the defendant in this case, are you?

A. Yes, sir.

Q. You are the president of Frank Waterhouse & Company, Incorporated, are you?

A. Yes, sir.

Q. And the principal stockholder in that company?

A. Yes, sir.

Q. In January and February, 1904, who was the owner of the steamship "Garonne"?

(Testimony of Frank Waterhouse.)

A. Frank Waterhouse & Company.

Q. How long had your company owned that steamer? A. Six years.

Q. Was the "Garonne" an American steamer?

A. No; a British vessel.

Q. When was she built? A. About 1870.

Q. She had an iron hull? A. Yes, sir.

Q. What was her dead-weight carrying capacity at that time? A. Cargo?

Q. Cargo, yes.

A. Well, in the trade in which she was engaged, about from 1000 to 1200 tons.

Q. Did you negotiate a sale, or contract for a sale of that vessel in January or February, 1904, if so to whom?

A. Yes, sir; I negotiated a sale to the North Alaska Steamship Company.

Q. Who was acting for the North Alaska Steamship Company in these negotiations?

A. Captain Ferguson.

Q. W. H. Ferguson? A. W. H. Ferguson.

Q. At that time did you know for whom Captain Ferguson was acting?

A. When the negotiations commenced, no, I did not know anything about it.

Q. Captain Ferguson lived in Seattle at that time, did he? A. Yes, sir, as far as I know.

(Testimony of Frank Waterhouse.)

Q. I hand you a copy of a telegram dated February 3, 1904, purporting to have been sent by you to W. H. Ferguson, Fifth Avenue Hotel, New York, and a copy of a letter purporting to have been written by you to Captain Ferguson on January 26th, 1904, and I will ask you to look at those papers and state whether they are copies of the letter and the telegram embodying the terms of the contract which you made with Captain Ferguson at that time.

A. Yes, sir.

Mr. BOGLE.—I offer these in evidence as Exhibits “A” and “B.”

Mr. KING.—We object to the introduction of the documents in evidence as irrelevant, immaterial and incompetent, and for the reason that they have not been connected in any way with General Dodge, or any interest of General Dodge’s.

Mr. BOGLE.—I will ask you whether you object to their being copies instead of the originals?

Mr. KING.—No. I have got the original telegram here, and if you say that you have got that sort of a letter, that is sufficient, I do not want any technical objections.

I also object to them on the ground that these matters were all included in the accounting between Mr.

(Testimony of Frank Waterhouse.)

Waterhouse, or Frank Waterhouse & Company and Mr. Pusey, representing General Dodge at or about June 2d, 1905.

(Documents received in evidence and marked respectively "Defendants' Exhibits 'A' and 'B.'")

Q. (Mr. BOGLE.) How much cash was paid to you at the time by Captain Ferguson on this purchase?

A. I think it was \$1,000; my recollection is very indistinct about it.

Q. Did Captain Ferguson, or the party for whom he was acting, at any time furnish you with a corporation bond guaranteeing the vessel against any indebtedness incurred during the time the vessel was in their hands? A. No, sir.

Q. Did he, or the parties for whom he was acting, ever execute notes (and secured by a mortgage upon the vessel, and assignment of the marine insurance thereon, and such other security as would be satisfactory to you, to secure the deferred payments?

A. No, sir.

Q. Who is the auditor and cashier of Frank Waterhouse & Company?

A. James B. Townsend.

Q. When payments were made to that company by the North Alaska Steamship Company, or any-

(Testimony of Frank Waterhouse.)

one on its behalf, through whose hands did those payments pass? A. James B. Townsend's.

Q. Can you, of your own personal knowledge, state what payments were made upon the purchase of this steamer?

A. No, sir; I cannot without referring to the books of the company.

Q. The books of the company show correctly all the payments and all the cash received from that company for any purpose whatever, so far as you know, do they? A. Yes, sir.

Q. I will ask you to state what efforts, if any, were made by you to induce the North Alaska Steamship Company or Capain Ferguson to carry out the terms of the contract of sale as shown and embodied in your telegram of February 3, marked exhibit "A" in your deposition?

Mr. KING.—I make the same objection to that as I have heretofore interposed.

A. Every possible effort was made by me to get them to carry out their bargain, both by letter and by wire and by personal interview with them. Time and time again I extended the dates of payment at their urgent request, and extended every consideration I could to them in order to enable them to complete their purchase.

(Testimony of Frank Waterhouse.)

Q. Did the North Alaska Steamship Company, through its representatives, at any time obtain possession of the steamer "Garonne" during the spring and summer of 1904, and, if so, for what purpose and under what conditions?

Mr. KING.—I object to that as irrelevant, immaterial, incompetent, and calling for a conclusion from the witness.

A. I do not quite understand that question, Mr. Bogle.

(Question repeated to the witness.)

A. The title to the steamer was never transferred to them. They were permitted, however, to put their own crew in the steamer and to make one round voyage from Seattle to Cape Nome, in June, 1904, on their own account, and the vessel was also in their charge for the purpose of making little changes that they desired to make on her; repairs and betterments; from about the middle of March until she sailed about the 2d of June.

Q. I hand you a package of papers, eighty-six in number, purporting to be correspondence by mail and telegram between yourself and the officers of the North Alaska Steamship Company, and I will ask you if those are telegrams and letters that passed between you and that company during the period as

(Testimony of Frank Waterhouse.)

shown by the dates of this correspondence? (Showing documents to witness.)

A. This correspondence consists of copies of letters and copies of telegrams that passed between the officers of the Occidental Securities Company, the North Alaska Steamship Company, the Chase National Bank of New York; all having reference to the sale of the "Garonne" by me to the North Alaska Steamship Company.

Mr. BOGLE.—I now offer these letters and telegrams in evidence.

Mr. KING.—We object to these as irrelevant, immaterial and incompetent, and there is no showing made that General Dodge ever had any knowledge or notice of them. I do not object to them as being copies.

(The bundle of correspondence identified by the witness is here received in evidence and marked "Defendants' Exhibits 'C' to '1-13,' " inclusive.)

Q. (Mr. BOGLE.) Mr. Waterhouse, are you acquainted with the plaintiff, Grenville M. Dodge?

A. No, sir.

Q. Did you ever meet him? A. No, sir.

Q. When was the first time that you ever heard of Mr. Dodge?

(Testimony of Frank Waterhouse.)

A. I think either the very last of April or the first of May, 1904.

Q. I call your attention to a telegram to you from C. B. Smith, dated at New York May 13, 1904, reading as follows: "To insure your protection, executed contract to-day, General Grenville M. Dodge. Nature contract itself protects you. Consult Dunn & Bradstreet for Dodge's rating. Mailing particulars. Have paid 5,000 more than terms of sale. Hoped to assist you and save discount, still expect to do so if necessary. Satisfactory securities for deferred payments. Some money to-morrow," and which is marked exhibit "T-I," and I will ask you if the receipt of that telegram was the first time that you ever heard of the complainant Grenville M. Dodge? A. Yes, sir.

Q. What, if any, action did you take upon the receipt of this telegram in view to ascertaining who General Dodge was and what was the nature of the contract that Mr. Smith had made with him for your protection?

A. I telegraphed my bankers in New York, the Chase National Bank, asking who General Dodge was, and what his financial standing was.

Q. I call your attention to a telegram from you to the Chase National Bank, under date of May 23,

(Testimony of Frank Waterhouse.)

1904, being one of the exhibits filed in this case with your deposition and I will ask you whether that is the telegram to which you refer (showing)?

A. Yes, sir.

Q. I call your attention to a letter from the Chase National Bank, under date of May 24, 1904, being one of the exhibits filed with your deposition, and I will ask you whether that is the response that you received to that telegram (showing).

A. It is, yes, sir.

Q. I call your attention to a letter from the North Alaska Steamship Company, dated New York, May 17, 1904, being one of the exhibits filed with your deposition, and I will ask you if that letter was received by you in due course of mail soon after that date (showing)?

A. It was.

Q. Did you at any time ever ascertain, further than is shown by the communications referred to, the nature of the contract that the North Alaska Steamship Company had made with General Dodge for your security?

A. I never could. I did not know what it was and I never could find out, although I repeatedly tried to.

Q. Did General Dodge, or the North Alaska Steamship Company, ever turn over to you any con-

(Testimony of Frank Waterhouse.)

tract or obligation of General Dodge, securing the deferred payments to you? A. No, sir.

Q. I call your attention to a copy of a telegram purporting to have been sent by you to Charles B. Smith, the Occidental Securities Company, 42 Broadway, New York City, on May 25, 1904, being one of the exhibits filed with your deposition. And I will ask you if that is a correct copy of the telegram (showing). A. That is a correct copy.

Q. Explain what was the occasion for sending that telegram.

Mr. KING.—I make the same objection to all this, that is, on account of the lack of knowledge of General Dodge, and not being brought home to him.

A. Our inability, after exerting every effort, to get the North Alaska Steamship Company to pay for this steamer according to their agreement, to satisfactorily secure the deferred payments; the date the telegram was sent was nearing the date at which the steamer should sail for Alaska, and I was unwilling to allow the steamer to proceed to sea in charge of the officers of the North Alaska Steamship Company until they had carried out their contract of purchase, at least enough to partly secure us for the amount then due.

(Testimony of Frank Waterhouse.)

Q. I call your attention to a telegram from J. B. Leake from New York, under date May 25, 1904, addressed to you, and I will ask you whether that is the telegram received by you in reply to the one just referred to (showing). A. Yes, sir.

Q. Who was J. B. Leake? ,

A. He was the secretary of the Occidental Securities Company and of the North Alaska Steamship Company, residing in New York.

Q. I call your attention to a telegram from you to the Occidental Securities Company, No. 42 Broadway, New York, under date May 26, 1904, and I will ask you whether that is a correct copy of a telegram sent by you on that date (showing).

A. Yes, sir, it is.

Q. Who were the Occidental Securities Company?

A. They were the owners of the North Alaska Steamship Company.

Q. I call your attention to a telegram from New York under date of May 26th to you from J. B. Leake, and I will ask you whether that is the answer which you received to that wire (showing).

A. Yes, sir.

Q. I call your attention to a telegram from Charles B. Smith dated New York, May 25th, ad-

(Testimony of Frank Waterhouse.)

dressed to W. H. Bogle, Seattle, which reads as follows: "Wired Waterhouse in full regarding telegrams of day" and which is marked exhibit "J-I"; will you please explain to what that refers?

Mr. KING.—I desire to interpose the same objection.

A. That telegram was sent for the reason that I had instructed Mr. Bogle, our attorney, to wire those people—to wire Mr. Charles B. Smith, the president of the Occidental Securities Company and North Alaska Steamship Company, that unless the terms of sale were satisfactorily completed immediately to take steps—or that steps would be taken to cancel the contract of purchase, and this telegram in question was sent to Mr. Bogle in answer to the one he sent notifying them to that effect.

Q. (Mr. BOGLE.) When was the first time that you ever met Charles B. Smith?

A. Either the 30th or the 31st day of May, 1904.

Q. Where did you meet him?

A. In my office in the Burke Building, Seattle.

Q. Was that just prior to the sailing of the "Garonne" for Nome?

A. Two days before she sailed.

Q. I call your attention to a copy of a telegram purporting to have been sent by Charles B. Smith

(Testimony of Frank Waterhouse.)

from Seattle on May 31st, 1904 to the Occidental Securities Company, New York, being one of the exhibits filed with your deposition, and I will ask you whether that was sent by Mr. Smith from your office (showing)? A. Yes, sir.

Q. What was the situation on that date; how much did the North Alaska Steamship Company owe to you on the purchase price of the vessel, and approximately how much did they owe on supplies and material and labor that were liens on the "Garonne"? A. On that date?

Q. Yes—May 31st, 1904.

A. I think they owed about \$50,000 on the purchase price, and between \$30,000 and \$35,000 on the payment for supplies, repairs and betterments.

Q. You are giving those figures from memory, are you? A. Entirely.

Mr. KING.—Then I move to strike it out as not the best evidence.

Q. (Mr. BOGLE.) Did you ever meet Mr. Pusey, a representative of the complainant G. M. Dodge in connection with these matters?

A. Yes, sir, I met him in my office in Seattle on the 30th and 31st day of May, 1904, for the first time.

Q. How long was that before the "Garonne" sailed on her voyage to Nome?

(Testimony of Frank Waterhouse.)

A. Two or three days.

Q. Was Charles B. Smith, the president of the North Alaska Steamship Company, present?

A. Part of the time, yes, sir.

Q. State what transpired between Mr. Pusey and yourself.

A. Mr. Pusey called on me and stated that he was the son-in-law of General Dodge of New York, and that he had come to Seattle for the purpose of securing, if possible, the repayment of a loan of \$10,000 that General Dodge had made to Charles B. Smith. He said that Charles B. Smith had promised General Dodge that this loan should be repaid out of the first freight earned by the steamer "Garonne," and wanted to know if we would see that the payment was made in accordance with this alleged agreement.

I told Mr. Pusey that, inasmuch as there was a large amount of money still owing to us on the purchase price of the vessel and an almost equally large amount of money owing by the North Alaska Steamship Company for repairs and betterments that they had placed on the "Garonne," and for supplies they had purchased for her which would constitute a lien against that steamer if not paid, that I should insist on all the money the steamer earned being

(Testimony of Frank Waterhouse.)

paid to us to apply first on the bills which had been contracted by the North Alaska Steamship Company on account of the steamer, and afterwards on account of the purchase price, and that I would not recognize any agreement made between General Dodge and Charles B. Smith. Mr. Pusey then dropped, or discontinued his attempt to persuade me to recognize the above mentioned agreement, and asked my cooperation in helping him to obtain the payment of or satisfactory security for the loan of General Dodge to Mr. Smith. Mr. Smith, who was in Seattle at the time, was called in and consulted regarding it, and he informed me that the loan in question was a private matter between himself and General Dodge; that it was not an obligation of either the Occidental Securities Company or the North Alaska Steamship Company. He expressed a desire, however, to repay the money to General Dodge as quickly as he could, and in the meantime to furnish security for it, if possible. Mr. Smith then agreed with Mr. Pusey that the "collect" freight money which would be due the North Alaska Steamship Company upon the correct delivery at Cape Nome of the "Garonne's" cargo destined for that port, should be paid over, or should be held for the account of General Dodge, and not used for any other purpose. He agreed to instruct his agent

(Testimony of Frank Waterhouse.)

at Cape Nome to collect this money, which, if my memory serves me, amounted to some six or seven thousand dollars, and to remit it to the Seattle National Bank for account of General Dodge, and to be applied on the payment of the above-mentioned loan; and I agreed as soon as the money was received by the Seattle National Bank to cause it to be forwarded to New York to General Dodge, or to notify him of its receipt in Seattle—I forget just which. Furthermore Mr. Smith agreed, on behalf of the North Alaska Steamship Company, to execute a mortgage to Frank Waterhouse & Company on the “Garonne” to secure it against the balance of the purchase price, and to promptly cause to be remitted from New York sufficient sums to pay the bills that had been contracted by and were then owing by the North Alaska Steamship Company on “Garonne’s” account. He also agreed to execute a second mortgage on the steamer in favor of general Dodge, to further secure the repayment of the \$10,000 debt owing by Charles B. Smith to General Dodge.

I cannot remember now whether there were two mortgages and whether there were two mortgages executed by Mr. Smith, or whether there was only one mortgage with an agreement between Mr. Pusey and myself that the Frank Waterhouse Company

(Testimony of Frank Waterhouse.)

claims in the mortgage were prior claims to those of General Dodge and were to be first paid, but it was one or the other. Now, the mortgage was drawn; it was signed—the mortgage or mortgages—it, or they, were signed by Charles B. Smith as president of the North Alaska Steamship Company, and handed to me to be forwarded to New York for the signature of the secretary of that company, with the assurance on Mr. Smith's part that the execution would be completed without any delay as soon as the document reached New York City. I sent the mortgage or mortgages, to the Chase National Bank in New York together with a bill of sale of the steamship "Garonne," and instructed the bank to notify Mr. J. B. Leake, the secretary of the North Alaska Steamship Company, who was a resident of New York, that the bill of sale and the mortgages were there; the latter for execution, and the former to be delivered to him as soon as the mortgages were properly executed. In due course of mail, or by wire, I do not now recollect which, the Chase National Bank advised me that Mr. Leake declined to execute the mortgage, on the ground that his directors refused to complete the arrangements made between Charles B. Smith, Frank Pusey and myself.

Q. (Mr. BOGLE.) I call your attention to the copy of a letter to the Chase National Bank New

(Testimony of Frank Waterhouse.)

York City, under date June 3d, 1904, being one of the exhibits heretofore filed with your deposition, and I will ask you whether that is a copy of the letter referred to, in which you inclosed this mortgage (showing). A. Yes, sir.

Q. I note by this letter that you state you enclose bill of sale of the steamship "Garonne" from Frank Waterhouse & Company, Incorporated, to the North Alaska Steamship Company, also a mortgage on the steamer from the North Alaska Steamship Company to Frank Waterhouse & Company. Did you enclose a bill of sale properly signed by Frank Waterhouse & Company, Incorporated, to be delivered upon the execution of the mortgage?

A. Yes.

Q. I call your attention to a copy of a letter written to J. B. Leake, 42 Broadway, New York City, under date June 3d, 1904 and I will ask you whether that is a correct copy of the letter sent by you to him on that date (showing). A. Yes, sir.

Q. I call your attention to a copy of a letter sent to the Occidental Securities Company, 42 Broadway, New York, under date June 3d, 1904, and I will ask you whether that is a copy of a letter written by you and mailed to them on that date (showing).

A. It is.

(Testimony of Frank Waterhouse.)

Q. What moneys, if any, were received by you subsequent to that date from New York for the payment of the bills that were liens against the "Garonne"?

A. None.

Q. What remittances, if any, were ever received by you from Nome, Alaska, from the freight collected there under the arrangement between Smith and Pusey?

A. None.

Q. There is, attached to the bill of complaint in this case, a contract between yourself and Mr. Pusey, by which it was agreed that you are to act as trustee for General Dodge in reference to these matters. Explain how that contract came to be executed.

A. Mr. Pusey wanted to have somebody here on the ground to help protect the interests of General Dodge in carrying out the agreement which I mentioned above, which was made between Charles B. Smith and himself, and he asked me, solely as a matter of accommodation, if I would act in the capacity of attending to General Dodge's interests in securing the completion of this agreement, if possible, and the proper carrying out of it. As a matter of accommodation purely, I agreed to act in that capacity, and had it stated in the memorandum of agreement that was drawn up between himself and my-

(Testimony of Frank Waterhouse.)

self that I did so act purely as a matter of accommodation to General Dodge and himself.

Q. Did Mr. Pusey have any acquaintances in Seattle at that time?

A. Not one that I know of.

Q. Did the North Alaska Steamship Company ever complete the execution of the mortgage that was forwarded to the Chase National Bank?

A. No, sir; they declined to.

Q. I call your attention to a telegram sent by you to J. B. Leake, 42 Broadway, New York, under date of June 10, 1904, reading as follows, and which is marked exhibit "U": "Have you executed mortgage and remitted money pay expense bills here? These matters pressing; require immediate attention. Answer." Did you send that telegram on that date? A. I did.

Q. I call your attention to a telegram from yourself to W. H. Rowe, 42 Broadway, New York, under date June 14, 1904, marked exhibit "N," and which reads as follows: "Will not let conditions remain as at present. Insist debts against 'Garonne' now due be paid immediately and mortgage be executed immediately. Will expect prompt reply stating definitely what you intend to do." Did you send that telegram? A. I did.

Q. Who was W. H. Rowe?

(Testimony of Frank Waterhouse.)

A. He was the vice-president of the Occidental Securities Company, and the vice-president of the North Alaska Steamship Company, and was at that time in New York.

Q. I call your attention to a telegram addressed to you and sent by J. B. Leake from New York under date June 11, 1904, being one of the exhibits filed with your deposition, and I will ask you whether you received that telegram on that date (showing). A. I did.

Q. I call your attention to a telegram addressed to you signed W. H. Rowe from New York, under date June 11th, being one of the exhibits attached to your deposition and I will ask you whether you received that on that date (showing).

A. I did.

Q. I call your attention to a telegram addressed to Frank Waterhouse & Company, signed W. H. Rowe from New York under date June 14, being one of the exhibits attached to your deposition, and I will ask you whether you received that telegram on that date? A. I did.

Q. Did the Mr. Mead referred to in that telegram, arrive in Seattle soon afterwards?

A. Yes, sir.

Q. Referring now to the time of the arrangement with Mr. Pusey state whether or not he was ad-

(Testimony of Frank Waterhouse.)

vised by Mr. Smith and yourself of the amount of the indebtedness due your company for the purchase price of the ship, and of the amount of the outstanding bills against the North Alaska Steamship Company so far as you knew of their existence at that time?

A. He was fully advised, yes, sir.

Q. What was done when Mr. Mead arrived in Seattle?

A. Mr. Mead inquired into and fully ascertained the condition of the North Alaska Steamship Company's indebtedness to Frank Waterhouse & Company, and to many and various creditors here on account of work done to, and supplies bought for the "Garonne," and conferred with Captain Hastings, who had been left here in charge of the North Alaska Steamship Company's office, and subsequently returned to New York, after spending about a week here in company with Mr. Bogle and myself.

Q. By whose request did you and Mr. Bogle go to New York? A. Mr. Mead's.

Q. For what purpose?

A. In an endeavor to reach some satisfactory adjustment of the amount due us on the purchase price of the "Garonne."

Q. About what time did you reach New York?

(Testimony of Frank Waterhouse.)

A. The very end of June, 1904, or the first of July.

Q. At that time where was the bill of sale and the mortgage which had been forwarded by you to the Chase National Bank?

A. At the Chase National Bank.

Q. After reaching New York, did you attend any meeting of the North Alaska Steamship Company and the parties who were interested in that company?

A. Yes, sir, several of them.

Q. Did Mr. Mead submit any report to that company, or the directors of that company, of the conditions existing out here?

A. Yes, sir; he told them exactly what the conditions were; he made them a written report.

Q. What was done in the way of making a settlement or adjusting the matters at that time when you were in New York?

A. After repeated efforts on the part of Mr. Mead and his friends, Mr. Leake and Mr. Rowe and their friends—the latter of whom constitutes the Occidental Securities Company and the North Alaska Steamship Company—the latter threw up their hands and served a written notice on me that they would be unable to complete their contract of purchase on account of their inability to raise money, and that they would be unable to pay the large

(Testimony of Frank Waterhouse.)

amount of debt that they had incurred on "Garonne's" account in Seattle, for the same reason.

Q. Did you, or your attorney, after you had exhausted your efforts in negotiating for a settlement, serve any notice on the North Alaska Steamship Company, that unless they carried out the contract you would take steps to cancel and forfeit it?

A. Yes, sir.

Mr. KING.—We object to the form of the question. There is no evidence here that they made or exhausted any efforts.

Q. (Mr. BOGLE.) How many days were you in negotiation with those parties, in the effort to secure a settlement?

A. I think about ten days, or two weeks.

Q. Did they raise any money to pay off their indebtedness which had been incurred here for material and labor, that were liens on the ship?

A. No, sir, they could not do it.

Q. Did they raise any money to pay off any part of the indebtedness to you? A. No, sir.

Q. I now hand you a paper and will ask if that was furnished to you by the officers of the North Alaska Steamship Company during this time in New York, as a correct copy of the minutes of the

(Testimony of Frank Waterhouse.)

meeting of the Board of Directors on that date (showing)? A. Yes, sir.

Mr. BOGLE.—I now offer this in evidence as exhibit “J-3.”

Mr. KING.—I object to that as irrelevant, immaterial, incompetent and not the best evidence.

(Document received in evidence and marked Defendants’ Exhibit “J-3.”)

Q. (Mr. BOGLE.) I now hand you another paper, and I will ask you if that paper was also served on you by the officers of the North Alaska Steamship Company on the day of its date, July 8, 1904 (showing). A. It was.

Mr. BOGLE.—I now offer that in evidence as Exhibit “K-3.”

(Document received in evidence and marked as above.)

Q. I hand you another paper dated New York, July 8, 1904, addressed to the North Alaska Steamship Company, and I will ask you whether that is a copy of a document served by you or your attorney for you, on the North Alaska Steamship Company on that date. A. It is.

Mr. BOGLE.—I offer that in evidence as exhibit “L-3.”

(Testimony of Frank Waterhouse.)

Mr. KING.—Was this supposed to be signed by Frank Waterhouse & Company?

The WITNESS.—Yes.

Mr. KING.—I object to it as irrelevant, immaterial and incompetent.

(Document received in evidence and marked Defendants' Exhibit "L-3.")

Q. (Mr. BOGLE.) I now hand you another paper dated July 9, 1904, addressed to you and signed by the North Alaska Steamship Company, J. B. Leake, Secretary, and I will ask you if that was served on you on the day of its date (showing).

A. Yes, sir.

Mr. BOGLE.—I offer that in evidence as exhibit "M-3."

Mr. KING.—I make the same objection.

(Document received in evidence and marked Defendants' Exhibit "M-3.")

Q. (Mr. BOGLE.) After the service of the papers which you have just identified, did you or your attorney make any adjustment with the North Alaska Steamship Company, or its attorneys, of the matters pending between them.

A. Well, we agreed to release the North Alaska Steamship Company, as I recollect it; they agreed to waive any claims for equity in the steamer.

(Testimony of Frank Waterhouse.)

Q. That was closed up between the attorneys for yourself and the North Alaska Steamship Company?

A. Yes, sir.

Mr. KING.—If he is speaking from hearsay as to the attorneys, I propose to object to it.

Mr. BOGLE.—He knows that the details were closed up.

Mr. KING.—We object to any testimony that is not based on the witness' own knowledge, as hearsay and incompetent.

Q. (Mr. BOGLE.) Do you know of your own knowledge what release or receipts were passed between them?

A. I did know, but I do not recollect now.

Q. Who was present at those various meetings in New York between yourself and those interested in the North Alaska Steamship Company and the Occidental Securities Company?

A. Mr. Rowe, Mr. Leake, Messrs. McKee & Frost, Mr. Arthur Baldwin of the firm of Griggs, Baldwin & Baldwin, attorneys, Mr. W. F. King, Mr. S. C. Mead, Mr. Corwine, and two or three other gentlemen, whose names I do not recollect, who were stockholders in the Occidental Securities Company.

(Testimony of Frank Waterhouse.)

Q. Was General Dodge present at any of those meetings? A. No, sir.

Q. What efforts, if any, were made to communicate with General Dodge, or secure his presence?

A. Mr. Corwine—

Mr. KING.—We want the witness' testimony limited to his own knowledge.

A. (Continuing.) Mr. Corwine endeavored to get in communication with him, and reported at one of the meetings that General Dodge was out of town, and he had been unable to learn of his address.

Mr. KING.—We object to the testimony and move to strike it out on the ground that it is irrelevant, immaterial, incompetent and hearsay.

Q. (Mr. BOGGLE.) Did you know General Dodge's address or where he was? A. No, sir.

Q. Did you know where Mr. Pusey, his son in law, was? A. No, sir.

Q. When Mr. Pusey was in Seattle about the first of June, how long did he remain here, after entering into the arrangements which you have heretofore stated? A. A few hours.

Q. Where did he state that he was going from here?

A. He was going to California, and I think he said thence to New Orleans or Mexico.

(Testimony of Frank Waterhouse.)

Q. Do you know, from any communications received from him, when he returned to New York?

A. It was the latter end of July, or August, I forget which. There is a telegram in the files from him; that was the first evidence I had of his return to New York.

Q. I hand you a paper purporting to be a letter written by you to Mr. Pusey, under date of August second, 1904, and I will ask you if that is a copy of the letter which you wrote to him on that date (showing).
A. Yes, sir, it is.

Mr. BOGLE.—I offer this in evidence.

(Document received in evidence and marked Defendants' Exhibit "N-3.")

Q. How long did you remain in New York after July 9, 1904?

A. I think I was in New York three or four days after.

Q. I hand you what purports to be copies of telegrams passing between yourselves and representatives of the North Alaska Steamship Company at various times during the spring of 1904, and I will ask you whether those are correct copies of telegraphic communications that passed between you at that time (showing).
A. Yes, sir.

Mr. BOGLE.—I offer these in evidence.

(Testimony of Frank Waterhouse.)

Mr. KING.—I make the same objection to them as I made to the exhibits “C” to “I-3,” inclusive.

(Document received in evidence and marked Defendants’ Exhibit “O-3.”)

Q. (Mr. BOGLE.) Mr. Waterhouse, you have heretofore testified in regard to the sale of the “Garonne” to the Merchants’ & Miners’ Steamship Company. Does that company own the “Garonne” at this time? A. No, sir.

Q. Have you within the last six or eight months sold the “Garonne” for any company that you are connected with? A. Yes, sir.

Q. At what time did you sell it?

A. The 15th of October, 1905.

Q. Was the sale for cash?

Mr. KING.—What is the purpose of this?

Mr. BOGLE.—To show the values.

Mr. KING.—Then I object to it as irrelevant, immaterial and incompetent.

A. Yes, sir.

Q. How much did she sell for?

Mr. KING.—I make the same objection.

A. Thirty-seven thousand five hundred dollars.

Q. (Mr. BOGLE.) Where was she at the time of the sale? A. Genoa, Italy.

(Testimony of Frank Waterhouse.)

Q. She had gone over under a charter, had she?

A. Yes, sir.

Q. Was that the best price which you could obtain for her?

Mr. KING.—I make the same objection.

A. Yes, after a very diligent effort in all the ports of Europe.

Q. (Mr. BOGLE.) Mr. Waterhouse, under this arrangement that was made with Mr. Pusey, have you, either personally or your firm or company, ever received any money from any source whatever that was applicable to this debt of General Dodge covered by that agreement?

A. No, sir. My trusteeship covered the carrying out of the agreement he made with Mr. C. B. Smith, and C. B. Smith failed to carry out any part of that agreement, so that I had no trusteeship to carry out.

Mr. KING.—I move to strike out the latter part of the answer to the question, as not responsive to the question, and as simply a legal conclusion of the witness.

Q. (Mr. BOGLE.) Did C. B. Smith on behalf of the North Alaska Steamship Company, execute any assignment to Mr. Pusey of the freights collectible at Nome on the cargo carried by the "Garonne" on that trip?

(Testimony of Frank Waterhouse.)

Mr. KING.—Is that in writing?

The WITNESS.—Yes, sir.

Mr. BOGGLE.—Yes, it is in writing, delivered to Mr. Smith.

(Question repeated to the witness.)

A. Yes, sir.

Q. Do you know who was appointed by Mr. Pusey to receive those freights under that assignment at Nome?

A. Mr. Smith himself.

Mr. KING.—If you are trying to get the contents of that assignment I shall object to it as not the best evidence. You have asked him a question and he has no right, instead of answering it yes or no, he is stating the name of the man, which is not exactly proper—if you have got the assignment and want to put it in evidence that is another thing.

Mr. BOGGLE.—We have not got it and we never had it. It was executed in our presence right then and there, and Mr. Smith was appointed the agent.

Mr. KING.—Unless you account for the loss of it, I object to his testifying in regard to it.

Mr. BOGGLE.—We never had it.

Mr. KING.—Still, I do not believe it is competent for him to testify about it.

(Testimony of Frank Waterhouse.)

Mr. BOGLE.—It was your people executed the agreement.

Q. Were those papers executed in your presence, in your office? A. They were.

Q. Was that at the time or just preceding the time of the execution of this trust agreement between Mr. Pusey and yourself? A. Yes, sir.

Cross-examination.

Q. (Mr. KING.) You state, in the telegram of February 3, 1904, to Mr. Ferguson, that you were to have a corporation bond guaranteeing the vessel against indebtedness and as security for your notes.

A. Yes, sir.

Q. That is right, is it? A. Yes, sir.

Q. When was the first time that you demanded this bond or security?

A. At the very commencement of our negotiations, at our first offer.

Q. Had you, when you made that demand, that first demand, received any money on account of the purchase price of the steamer? A. No, sir.

Q. Then, any money which you had received on account of the purchase price of the steamer was received after that demand.

A. It was not a demand, it was a condition—it was a conditional sale.

(Testimony of Frank Waterhouse.)

Q. You will answer my questions; I asked you
“When you made that demand.”

A. I do not understand it when you put it that way.

(Former question repeated to the witness.)

A. I don't know what it means; I cannot answer it.

Mr. KING.—Read back the testimony he has just given on his cross-examination as to what he said about the demand.

(Testimony read by the stenographer.)

Mr. KING.—Now, read him the question—you have testified here that you demanded at the very first a corporation bond in security for your notes—

A. It was a condition of the purchase.

Q. I didn't ask you that.

A. Well, I cannot answer it; I do not know.

Q. You can answer it yes or no.

A. Let it go at that; I cannot answer such a question as that; it is put in such a shape as nobody can answer it. If you ask me sane questions I will give you sane answers.

Q. Did you ever receive this corporation bond?

A. No.

Q. Did you ever receive any security for your notes? A. No.

(Testimony of Frank Waterhouse.)

Q. Did you make more than one request or demand for this corporation bond, or those securities?

A. I made a great many requests.

Q. About how many?

A. I cannot remember, perhaps a hundred.

Q. Was any of those requests made before or after you received any of those payments?

A. Yes, both before and after.

Q. You did receive payments, then, after making this request?

A. We received payments on account of the purchase price.

Q. Well, on account of the purchase price—you state that the North Alaska Steamship Company had possession of the steamer "Garonne" for one voyage to Cape Nome, and from about the middle of March until she left here for Nome, previous to that voyage, during that time you acted as agent for the steamer, didn't you—the Frank Waterhouse Company? A. We acted as traffic agents.

Q. And were paid for your services as such agents? A. Yes.

Q. Or charged them up to the North Alaska Steamship Company. A. Yes, sir.

Q. You also acted as general agent for the vessel in the matter of disbursements during that time?

(Testimony of Frank Waterhouse.)

A. Yes, sir.

Q. And also were paid for that service?

A. Yes.

Q. And advertised the ship under your name as agent and under the name of the North Alaska Steamship Company as owners during that time, didn't you?

A. Yes, sir.

Q. When Mr. Pusey called on you in the latter part, or nearly the last day of May, was that the first time you had heard of General Dodge?

A. No; I heard of General Dodge, as I testified to already, sometime earlier in May.

Q. Sometime earlier in May?

A. Or in April, I forget which.

Q. You heard of him through Smith the first time, then? A. Yes, sir.

Q. And was that the first time you had heard of him? A. Yes, sir.

Q. You did not know who he was, by repute, before that time?

A. I never heard of such a man.

Q. These exhibits that have been put in here by your counsel, particularly the various exhibits from "C" to "1-3"; do you know whether or not any of these were ever known by or communicated to Gen-

(Testimony of Frank Waterhouse.)

eral Dodge—the contents of those various letters or telegrams?

A. I do not know anything about that.

Q. You did not communicate any of them to him?

A. No, I did not know him at the time.

Q. As far as you know they were not?

A. As far as I know they were not.

Q. How much money had you received, do you know, on account of the purchase price of the “Garonne” on or about May 25th or 26th, 1904, when, in accordance with these telegrams, you threatened to cancel the contract of purchase?

A. About \$35,000.

Q. Then since that time then you received some more money on account of the purchase price of the ship, did you? A. Yes, sir.

Q. You stated that you first met Charles B. Smith in the Burke building on May 30th, 1904.

A. I would like to correct that statement; it was made entirely by mistake; I think I did meet Mr. Smith in New York in April, in the office of the Occidental Securities Company.

Q. Had you any correspondence with Mr. Smith prior to that time, about meeting him?

A. Yes, sir.

Q. You had correspondence with Smith practically on the inception of this contract to purchase the “Garonne,” didn’t you?

(Testimony of Frank Waterhouse.)

A. No, I think not; nearly all the correspondence was with Mr. J. B. Leake, I cannot remember—I do not remember when the correspondence started with Mr. Smith, but it will show in these files.

Q. Now, you have stated in your direct examination that on May 31st, 1904, at about the time that Pusey arrived in Seattle representing General Dodge, that there was \$50,000 due on the purchase price of the boat, and from \$30,000 to \$35,000 for betterments, repairs and supplies; are you not mistaken in that?

A. My recollection goes that it was in that neighborhood; I think that after June 1st we received about \$18,000 on account, but am not at all sure about it. I cannot state positively from recollection.

Q. Referring now to the memorandum which you entered into with Frank S. Pusey as agent for G. M. Dodge, on or about the first of June, or the 2d, when the steamer sailed, and in which you speak about the two mortgages and the agreement to act as trustee, you state, or at least it says in this memorandum statement, "The North Alaska Steamship Company is indebted to said Waterhouse & Company, Incorporated, in the sum of \$37,671.46, being the balance due on the purchase price of the steamship 'Garonne,' and also indebted to the said G. M. Dodge in the sum of \$10,000 for borrowed money"; that statement as to

(Testimony of Frank Waterhouse.)

the purchase price of the steamer 'Garonne' is correct, is it? A. Yes, it is exactly correct.

Q. You say Pusey at the interview you had with him when he came here, told you that Smith had promised Dodge that the loan of \$10,000 should be paid out of the first freight earned by the "Garonne."

A. Yes, sir.

Q. Was Smith present when Pusey told you that?

A. It was told on two occasions; Smith was present once.

Q. Where was it told the second time?

A. In the morning and the afternoon of the same day.

Q. In your office? A. Yes, sir.

Q. In Seattle? A. Yes, sir.

Q. You do not know whether Smith was present in the morning or the afternoon, do you?

A. He was present in the afternoon; not in the morning.

Q. What reply did Pusey make when you told him that you should insist on all the money that she earned being paid to you, to apply first on the bills and second on the account of the purchase price, and would not recognize any agreement between Dodge and Smith? A. I do not remember.

(Testimony of Frank Waterhouse.)

Q. This conversation, however, occurred before this memorandum in which you agree to act as trustee, was drawn up and executed? A. Yes, sir.

Q. When did you first learn that Leake, as representing the North Alaska Steamship Company, declined to execute the mortgage?

A. Sometime about the middle of June.

Q. Did you communicate that information to either General Dodge or Pusey?

A. I do not remember; no, I do not think I did; I do not think I had their address.

Q. You said that when Mr. Mead arrived in Seattle, he conferred with Captain Hastings; now, who was Captain Hastings?

A. One of the officers of the North Alaska Steamship Company.

Q. Do you know what officer he was?

A. No, I do not know what title he held.

Q. Do you know what he did?

A. Yes; he was directing the business in Seattle.

Q. Do you know what the object of Hastings' conference with him was? A. No, sir.

Q. Was this Mr. W. F. King, a member of the Occidental Securities Company?

A. Yes, sir.

Q. And of the North Alaska Steamship Company.

(Testimony of Frank Waterhouse.)

A. Well, I suppose he was, because the North Alaska Steamship Company was owned by the Securities Company. I think he was a stockholder in the Securities Company.

Q. He was the chief objector to anything further being done by the North Alaska Steamship Company towards acquiring the "Garonne"?

A. Oh, no; on the contrary, he would have been very glad indeed to have seen them able to place themselves in a position to have completed their purchase. He had a considerable sum of money invested in it.

Q. You said that Mr. Corwine endeavored to get into communication with General Dodge. What endeavors did he make to your own knowledge?

A. I have no knowledge of it at all; simply—

Q. Simply what he told you? A. Exactly.

Q. That is all you now of any efforts to communicate with General Dodge about that time?

A. Just what I heard him say.

Q. Referring to Defendants' Exhibit "N-3," a letter to F. S. Pusey addressed 101 Broadway, New York, and dated Seattle, August 2d, 1904; how did you ascertain Mr. Pusey's address at 101 Broadway, New York? A. What is the date of it?

Q. August 2d, 1904.

(Testimony of Frank Waterhouse.)

A. That is in reply to a letter I received from him?

Q. That is in reply to a letter you received from him. A. Yes, well—

Q. Is it not in reply to a telegram which you received from him?

A. I don't know—(referring to document); yes, it is.

Q. Then you wish to correct that statement and say it is in reply to a telegram received from him.

A. It is in reply to a telegram.

Q. This letter came back to you undelivered, didn't it?

A. (Referring to document.) I do not remember whether that was the one or not. One letter I wrote to him came back—I cannot recollect whether that was the one or not.

Q. You cannot recollect whether that was the one or not? A. No.

Q. Why did it come back?

A. It was not delivered.

Q. Why was it not delivered?

A. I presume the address was wrong.

Q. Are you acquainted with the handwriting of J. P. Townsend, the treasurer of Frank Waterhouse & Company?

A. Yes, sir.

(Testimony of Frank Waterhouse.)

Q. I hand you a paper marked for identification as Plaintiff's Exhibit No. 24 (showing) and I will ask you whether that is in the handwriting of J. P. Townsend.

A. Yes, sir.

Q. I will ask you if that letter which I have referred to, under date of August 2d in that exhibit 24, is your letter of August 2d to F. S. Pusey, which you have testified about and which is marked Defendants' Exhibit "N-3"—and I will state that I have the original letter if you have any doubt about it—it is the letter which came back and here is the envelope if you want any more evidence.

A. That was the letter that is referred to in this one of Mr. Townsend's.

Q. Then the letter which is marked Defendants' Exhibit "N-3," addressed to F. S. Pusey at 101 Broadway, is the letter that was returned because it was wrongly addressed?

A. Evidently so, yes, sir.

Q. And, therefore, did not reach Mr. Pusey until after it left Seattle on August 19, 1904.

A. That is so.

Mr. KING.—I offer in evidence the letter of Townsend and ask that it be marked as exhibit "No. 24."

(Testimony of Frank Waterhouse.)

(Document received in evidence and marked "Complainant's Exhibit No. 24.")

Q. (Mr. KING.) You speak here in this letter of August 2d, 1904, to Pusey, being Defendant's Exhibit "N-3"; "I was obliged to take back the steamer 'Garonne' and assume the indebtedness which the North Alaska Steamship Company had loaded her with, amounting to almost \$35,000. I took the steamer back and assumed the indebtedness and subsequently sold her to another corporation"; has that reference to the sale to the Merchants' & Miners' Steamship Company? A. Yes, sir.

Q. And is that the indebtedness which you speak of assuming; is that the indebtedness which was paid or partially paid by the \$30,000 furnished by the Merchants' & Miners' Steamship Company, or by Mr. King?

A. Yes, sir, it was paid with that money.

Q. When did you leave New York in 1904?

A. The 10th or 12th of July, I do not remember exactly.

Q. You stated in your direct examination that the Merchants' & Miners' Steamship Company does not own now the "Garonne"? A. No.

Q. When did they sell her?

A. April, 1905, I think.

(Testimony of Frank Waterhouse.)

Q. April, 1905—to whom did they sell her?

A. The White Star Steamship Company.

Q. Are you a stockholder in the White Star Steamship Company? A. I am.

Q. Were you at the time the "Garonne" was sold to her? A. I was.

Q. Are you the principal stockholder?

A. I am at this time.

Q. Were you at that time? A. No.

Q. Were you president or an officer of the company at that time? A. I was.

Q. What office did you hold? A. President.

Q. Of the White Star Steamship Company?

A. Not at the time the steamer was sold.

Q. You are the president now? A. Yes.

Q. What office did you hold at the time the steamer was sold? A. None.

Q. Simply stockholder? A. Yes.

Q. What was the steamer sold to the White Star Steamship Company for?

A. Stock in the White Star Steamship Company.

Q. How much stock?

A. Ninety thousand dollars.

Q. That was received by Frank Waterhouse & Company?

A. No; it was received by the Merchants' & Miners' Steamship Company.

(Testimony of Frank Waterhouse.)

Q. And the Merchants' & Miners' Steamship Company now are out of existence.

A. Yes.

Q. And what became of that stock, then, on the dissolution of the Merchants' & Miners' Steamship Company?

A. That stock was divided; the stock in the White Star Steamship Company was accepted by the stockholders—by the individual stockholders in the Merchants' & Miners', in lieu of the Merchants' & Miners' Steamship Company stock.

Q. Share for share?

A. Oh, no, not share for share.

Q. Then, in what proportion was it accepted?

A. I do not remember.

Q. Then she was sold by the White Star Steamship Company?

A. She was sold by the White Star Steamship Company to parties in Genoa.

Q. Then she was chartered by the White Star Steamship Company to the Russian Government.

A. No, sir.

Q. What was she doing during the time she was with the White Star Steamship Company?

A. A part of the time she was lying idle alongside of the dock; part of the time she was on the way crossing the Pacific to engage in a charter to

(Testimony of Frank Waterhouse.)

carry troops from Shanghai to Odessa; part of the time she was carrying troops from Shanghai to Odessa; part of the time she was lying in the harbor of Theodosa, idle; part of the time she was on the route between Theodosa and Genoa.

Q. Then she never was under charter to the Russian government? A. No, sir.

Q. Didn't she have pretty bad weather out there; didn't she have bad weather going out there?

A. No.

Q. Did she meet with any vicissitudes to your knowledge? A. Out in the Orient?

Q. Yes.

A. No. You mean affecting the steamer?

Q. Yes.

A. No, sir. You mean affecting the condition of the steamer?

Q. Yes.

A. No, sir. Crossing the Pacific from Seattle to Kobe she got in a blow that necessitated repairs, amounting to some \$8,000 and which were made in Kobe before she proceeded to Shanghai, but nothing else. She had good weather as far as I know and she was in good condition throughout the voyage.

Q. Who is S. A. Serebrevik?

A. He is a Russian.

(Testimony of Frank Waterhouse.)

Q. Isn't he the agent of the Czar of Russia?

A. Not that I know of—I never heard it.

Q. Didn't you testify that he was agent of the Czar then, in the suit between yourself and Barneson—Hibbard & Company?

A. No, sir, I never testified to anything of the kind. I have not testified at all in that suit.

Q. That charter party provided that the vessel be brought back to Seattle? A. Yes, sir.

Q. Why was not that done?

A. The charterer failed to perform his obligation.

Q. He abandoned the vessel in the Black Sea, didn't he?

A. He abandoned his charter, yes, sir.

Q. And you had to take possession of her again in the Black Sea, didn't you? A. Yes, sir.

Q. When you were first told that Dodge was contemplated as security for the balance due on the steamer, did you make any inquiry as to his financial condition or responsibility? A. Yes, sir.

Q. When was that?

A. I do not remember the date.

Q. As near as you can place it.

A. I have no idea what it was.

Mr. BOGLE.—That telegram is in evidence.

A. (Referring to telegram.) May 23, 1904.

(Testimony of Frank Waterhouse.)

Q. In the meetings held in New York, concerning which you have testified in the early part of July, 1904, didn't you refuse to take back the steamer and release the North Alaska Steamship Company unless this indebtedness was paid—I am speaking now of the claims and things against the steamer?

A. I don't remember.

Q. Didn't you, as a fact, have an arrangement with Mr. W. F. King, and those associated with him, that they would furnish enough money to pay those claims before you would consent to accept the ultimatum of the North Alaska Steamship Company and take the steamer back and release them.

A. No, sir.

Q. That agreement with King and his associates, by which he was to advance \$30,000, then, was not made until after you got the release from the North Alaska Steamship Company?

A. To the best of my recollection it was not.

Mr. KING.—I cannot find what I am looking for, but perhaps you can tell me, Mr. Bogle. Is there any dispute about the fact that this statement furnished by Townsend is not correct?

Mr. BOGLE.—Anything furnished by Townsend is correct.

Mr. KING.—I refer to this (referring to Complainant's Exhibit "No. 19.")

(Testimony of Frank Waterhouse.)

MR. BOGLE.—That is correct.

MR. KING.—Then there will be no contest on that.

MR. BOGLE.—No.

Q. (MR. KING.) How much did you say the bill of repairs at Kobe was for the “Garonne”?

A. I do not remember; six or seven thousand dollars.

Q. It was not \$16,000? A. No, sir.

Q. You do not make an insurance claim for damages for \$16,000? A. No, sir.

Q. Or anyone on behalf of the boat?

A. No, sir.

Q. Do you know who Plaskett is?

A. Yes.

Q. He was chief engineer on that voyage, wasn't he? A. Yes, sir.

Q. Then you would say that his statement that there were \$16,000 of repairs, and that the boat was badly stove up when she reached Kobe is not correct? A. Absolutely incorrect.

MR. BOGLE.—There is no evidence that he ever made any such statement, and I object to the examination as assuming that he did.

Q. (MR. KING.) Do you know when she reached Odessa?

(Testimony of Frank Waterhouse.)

A. No, sir, I do not remember.

Q. Do you know whether or not she reached Odessa when there was trouble with the revolutionists in Russia; the naval revolutionists?

A. She did.

Q. And she went from Odessa to Theodosa?

A. Yes, sir.

Q. Where is Theodosa?

A. About 100 miles from Odessa, on the Black Sea, eastward.

Q. And from there she went to Genoa?

A. Yes.

Q. As a matter of fact, wasn't she sold to be broken up? A. Yes.

Q. Why didn't she come back to Seattle?

A. Because the charterer did not bring her back and she was not worth the company bringing her back—we could not afford it.

Q. Wasn't she worth more in Seattle than she would be in Odessa, in your judgment?

A. No, I do not think she would sell for more.

Q. Why?

A. Because to start with, she was nearly 40 years old and the only employment she could be used in Seattle for, was for three voyages a year up to Cape Nome, and that is a very unprofitable condition of affairs; she never made any money, or but very

(Testimony of Frank Waterhouse.)

little money, if any, running to Cape Nome. She was a white elephant on my hands ever since she got through with the transport service. I tried repeatedly to sell her in every port almost in the United States. Nearly every broker in the country had her and we never got an offer for her. The only chance we ever had to sell her at any time was to the North Alaska Steamship Company. She was simply a white elephant.

Q. You did not tell them she was a white elephant, did you?

A. No, sir, I had her for sale.

Q. You did not tell them she was unprofitable?

A. No, sir. Sellers don't usually give the worst side of it.

Q. You made reports to the contrary, didn't you, right here in these telegrams put in evidence today?

Mr. BOGLE.—If there is anything represented in the telegrams, they show for themselves, and I object to the witness being interrogated as to the contents of the telegrams.

Q. (Mr. KING.) You did not consider then that she was worth any more in Seattle than she was in Odessa after she had been through this hard voyage to Japan.

(Testimony of Frank Waterhouse.)

A. That didn't do her a particle of harm; she was probably better when she left Japan than when she left Seattle. She was put in first-class repair as far as possible to put a vessel that is 40 years old in shape. I do not think she could have been sold here at all, to start with. We tried repeatedly to sell her, but we could not even sell her for breaking up purposes here. There is no market for anything of the kind.

Q. That was the reason you could not sell her?

A. The vessel, at the time she was sold, was a very poor piece of property.

Q. And practically when you received forty-seven odd thousand dollars for her from the North Alaska Steamship Company, you received all that she was worth?

A. Well, that year there was a large business to Alaska.

Q. Well, didn't you?

A. No, sir, not to us at that time we didn't.

Q. She was worth fully \$85,000 to you at that time, was she?

A. She was worth whatever we could get out of her, and we sold her for \$85,000.

Q. But she was worth more than \$47,000 you think—in other words, when you got \$47,000 you did

(Testimony of Frank Waterhouse.)

not get more than she was worth—I understand you to testify to that just now?

Mr. BOGLE.—I object to that as utterly irrelevant and immaterial and it does not affect this defendant in any way or this complainant, or affect any of the issues in this case.

A. I would not have paid \$47,000 for the ship.

Redirect Examination.

Q. (Mr. BOGLE.) Mr. Waterhouse, you stated that you were in New York in April, 1904.

A. I think I was.

Q. I hand you a bill of sale from Frank Waterhouse & Company, Incorporated, to the North Alaska Steamship Company, dated the 8th day of April, 1904, and I call your attention to the telegram from the assistant cashier of the Chase National Bank to you, under date of April 28th, 1904, (showing) and I will ask you whether on that trip to New York in April, 1904, you made a demand on the North Alaska Steamship Company to take title to this vessel and carry out their contract, by furnishing you a mortgage on the vessel and notes, with a bond guaranteeing the vessel against liens and other satisfactory security, according to their contract?

A. I did, sir.

Q. What was the result?

(Testimony of Frank Waterhouse.)

A. The result was that they were unable at the time to comply with the terms of the sale and they requested that the bill of sale be deposited with the Chase National Bank in New York.

Q. (Mr. KING.) Do you mean the North Alaska Steamship Company by "they"?

A. The North Alaska Steamship Company. So that it would be available for them to take up just as quickly as they could put themselves in shape, for completing the contract of purchase.

Mr. BOGLE.—I offer this bill of sale in evidence.

(Document received in evidence and marked Defendants' Exhibit "P-3.")

Q. (Mr. KING.) After this understanding which you have just testified about, did you receive any money on account of the purchase price of the ship?
A. After this?

Q. Yes, after this? A. Oh, yes.

Q. You did? A. Oh, yes.

Q. About how much?

A. I cannot remember. I do not know what we got up to that time.

Q. But you did receive money after that?

A. Certainly.

(Testimony of Frank Waterhouse.)

Q. (Mr. BOGLE.) Does the statement furnished counsel in this case by Mr. Townsend, your cashier, show the dates of the various receipts of the money by you from the North Alaska Steamship Company? A. Yes, sir.

Q. When you speak of not knowing what moneys you received, you mean you have no means from your personal recollection of stating them.

A. I cannot remember—I can find it.

Q. Your books show?

A. Certainly, and the statement here furnished shows it.

Mr. KING.—You do not dispute that is a correct statement?

A. No, sir, I admit it.

(Testimony of witness closed. Whereupon the further hearing is adjourned to be taken up by agreement between the parties.)

April 27, 1906.

Continuation of proceedings pursuant to agreement.

W. H. BOGLE, appearing as a witness in behalf of defendant, being first duly cautioned and sworn, testified as follows:

Mr. KING.—We object to the taking of any testimony at this time on the ground that it is beyond

(Testimony of W. H. Bogle.)

the time allowed by the court. I shall object to any testimony in regard to efforts to communicate with General Dodge and I am objecting to the time being extended for that reason. I do not want to object to your testimony here now, because I always understood you were going to testify, but certainly I think if you wanted that testimony you could have got it during the time Mr. Waterhouse was away, from the 10th of January. I shall not insist on any objection to this testimony strenuously in court, but I simply want to preserve my rights.

Mr. BOGLE.—During the years 1904-05, and for several years prior thereto, I was secretary of Frank Waterhouse & Company, Incorporated, and was, and had been, attorney for the company since its organization.

In January, 1904 Mr. Waterhouse informed me that one Captain W. H. Ferguson was negotiating for the purchase of the steamship "Garonne" from Frank Waterhouse & Company, Incorporated, and I conferred with him day by day as those negotiations progressed, and assisted him in formulating the terms of the letter dated January 26, marked Defendants' Exhibit "B" to the deposition of Frank Waterhouse herein; and also in formulating the telegram from Mr. Waterhouse to Captain Ferguson

(Testimony of W. H. Bogle.)

under date of February 3, 1904, and marked Defendants' Exhibit "A" in this case.

Upon the payment of the \$1,000 cash made upon the acceptance of this proposition by W. H. Ferguson and his associates, a receipt was executed embodying the same terms as those mentioned in this telegram, with the additional clause that any payments made by the purchaser should be forfeited if the purchaser failed to carry out and complete the contract price.

Mr. KING.—We object to the testimony and move to strike it out on the ground that the receipt itself is the best evidence and it has not been produced, nor has the failure to produce it been accounted for.

Mr. BOGLE.—(Continuing.) I was acquainted with the general progress of the dealings between Mr. Waterhouse and Captain Ferguson and the North Alaska Steamship Company, which company turned out subsequently to be the party for whom Captain Ferguson was acting, but I had no direct communication with them myself, except as Mr. Waterhouse advised with me from time to time as to the status of things. At one time, during the month of April or May, I wired to the North Alaska Steamship Company that unless they promptly complied with the—

(Testimony of W. H. Bogle.)

Mr. KING.—Have you got the telegram?

Mr. BOGLE.—I do not know whether I have got the wire here or not. Their answer is here. I will look it up and see (examines documents). On or about the 25th of May, 1904, I wired to the North Alaska Steamship Company under instructions from Frank Waterhouse & Company, to the effect that—

Mr. KING.—I make the same objection, as not the best evidence.

Mr. BOGLE.—(Continuing.) —to the effect that steps would be taken at once to forfeit their contract to purchase, or option, unless they complied with the terms of it by taking over the title to the vessel and executing the securities required to be executed by the contract; and received the answer, under date of May 25, from Charles B. Smith, which is marked Defendants' Exhibit "J-1" to the deposition of Mr. Waterhouse.

On or about the 1st of June, 1904, Mr. Charles B. Smith reached Seattle from New York on his way to Alaska. The steamship "Garonne" at that time was loading and about ready to sail on her first voyage to Nome. Mr. Waterhouse had notified the North Alaska people that he would not permit the vessel to sail until they complied with the terms

(Testimony of W. H. Bogle.)

of their contract. At the same time Mr. F. S. Pusey—

Mr. KING.—I understand that you are testifying to this of your own knowledge that Waterhouse notified them, or simply as to what Waterhouse told you?

Mr. BOGLE.—(Continuing.) I am referring to the written notification which appears in the telegrams and communications which are on file as exhibits to Mr. Waterhouse's deposition, and to what Mr. Waterhouse informed me at the time, and I am not sure that I was present when he gave the notice to Mr. Smith. I am not able to say definitely whether I was or not.

Mr. KING.—I move to strike out any testimony that is not within the witness' personal knowledge, or any statement as to any conversations or notices, at which he was not present.

Mr. BOGLE.—(Continuing.) I was requested, on or about the first or second of June, 1904, to go to Mr. Waterhouse's office to meet Mr. Pusey and also Mr. Charles B. Smith, the president of the North Alaska Steamship Company. When I first went to the office, Mr. Smith was not present, but Mr. Pusey was, and there was a general conversation between

(Testimony of W. H. Bogle.)

Mr. Waterhouse, Mr. Pusey, and myself with regard to the situation. It was stated by Mr. Waterhouse to Mr. Pusey that there was a balance due on the purchase price, of some thirty-seven or thirty-eight thousand dollars. He gave the exact figures as they appeared on his books, but I do not remember the odd amount. It was explained to me that Mr. Pusey represented General G. M. Dodge of New York, and that General Dodge held a claim against the North Alaska Steamship Company for some \$10,000. Mr. Waterhouse and Mr. Pusey had been in conference prior to the time I was called in, and they had been securing data from the representatives of the North Alaska Steamship Company, particularly from Mr. Hastings. It seemed, from the representations that had been made to them of the amount of freight—

Mr. KING.—We object to this line of testimony, as appearing to be out of the witness' knowledge.

Mr. BOGLE.—(Continuing.) It seemed from the reports and data furnished and in the possession of Mr. Waterhouse and Mr. Pusey at that time, that there would be some considerable amount—my recollection is something like \$18,000—realized from the freights on the cargo then on board the "Garonne," and which would be applicable to the payment of the bills that had been incurred by the North Alas-

(Testimony of W. H. Bogle.)

ka Steamship Company for some repairs and alterations on the ship and for supplies for the ship. The amount of those outstanding bills had not been definitely ascertained, but from the reports given by Captain Hastings and from the accounts which had been rendered and which were then in the hands of Mr. Townsend, the treasurer of Frank Waterhouse & Company, it was estimated by Mr. Waterhouse that the outstanding bills would not exceed fourteen or fifteen thousand dollars. Mr. Pusey was present and saw the statements and data and reports that Mr. Waterhouse had upon which those estimates were based, and the estimates seemed to correspond with the information he had received from the North Alaska Steamship Company people. Mr. Waterhouse and Mr. Pusey explained to me that Mr. Smith, on behalf of the North Alaska Steamship Company, had agreed to execute a mortgage upon the steamship "Garonne" to secure the balance of the purchase money due Mr. Waterhouse, amounting to something over \$37,000, and to execute a second mortgage upon the steamer to secure the \$10,000 claimed to be due General Dodge, and we had conferences as to the best shape in which to put these securities. They stated that Mr. Smith had reported to them that the New York office of the

(Testimony of W. H. Bogle.)

North Alaska Steamship Company, or his New York associates there, were prepared to advance whatever amount of money might be necessary, if any should prove to be necessary, to pay any balance that might be owing for supplies and repairs and betterments to the ship, so that the two mortgages would represent the only indebtedness against the ship.

It was agreed at that time that, in view of these statements, they would make the settlement with the North Alaska Steamship Company on the basis I have just outlined, of taking mortgages for the balance due, and, on my suggestion, it was agreed that instead of taking two mortgages, I should prepare one mortgage, which would provide for a first lien in favor of Waterhouse & Company for the amount due them, which amounted to something over \$37,000, and in the same instrument provide for a second lien in favor of General Dodge for the \$10,000.

Either on that afternoon or the next morning I met Mr. Waterhouse and Mr. Pusey again in Mr. Waterhouse's office, and Mr. Charles B. Smith was present. At that time further reports of outstanding indebtedness had come in, which indicated that the estimate of fourteen or fifteen thousand dollars would not cover the outstanding bills. Mr. Smith stated that his New York associates had confidently expected the receipts from the freight and passen-

(Testimony of W. H. Bogle.)

ger money would not only pay all outstanding bills for supplies and repairs, but would give a considerable surplus, which could be applied in payment, or part payment, of the balance due Mr. Waterhouse, and that he had been very much surprised on reaching Seattle and going over the books with Captain Ferguson and Mr. Hastings, to find that they had expended such large sums in supplies, betterments and repairs, and that it would be necessary for him to wire the situation to his New York associates and explain the condition in which he found things here, and to give them some forty-eight hours to make their arrangements to raise the money to pay off the balance of the lien debt. He stated, however, that they would pay them at once, that is, within forty-eight hours after his wire reached there, and that they would be prepared to pay one-half of the balance due Mr. Waterhouse in ten days, and the other half in twenty days, and that they would meet Mr. Dodge's claim within a short time thereafter. It was then agreed between Mr. Smith, Mr. Waterhouse, Mr. Pusey and myself, that Mr. Smith should inform his associates in New York and arrange for them to wire such an amount of money to Seattle as might be necessary to pay any balance due on these lien debts, and Mr. Waterhouse agreed that, instead of making his debt due in ten and twenty

(Testimony of W. H. Bogle.)

days, he would make it due in twenty and forty days, and Mr. Pusey arranged with Mr. Smith that his debt should become due in sixty days, and Mr. Waterhouse withdrew any objection to the sailing, under that understanding.

I prepared the mortgage in accordance with this agreement, and prepared two notes dividing Waterhouse & Company's debt into two parts, one of them payable in twenty days and the other in forty days. I also prepared a bill of sale to be executed by Frank Waterhouse & Company, and to be delivered when the mortgage was executed. Mr. Pusey and Mr. Waterhouse then explained to me that Mr. Smith had transferred to Mr. Pusey, either as security or as part payment—I understood as security—for the Dodge debt a considerable amount of the freight money that would be payable at Nome upon the arrival of the ship there; the amount was stated to be approximately \$10,000, although I did not see either the assignment or a list of the bills which were assigned. It was stated to me also at the time that Mr. Pusey had appointed Mr. Smith as his agent at Nome to collect these freight moneys for General Dodge, and to remit them to the Seattle National Bank, in Seattle, for General Dodge's benefit. They also told me that Mr. Pusey had requested Mr. Waterhouse to represent his interests as trustee at Seat-

(Testimony of W. H. Bogle.)

tle in the receipt of this money, or having it forwarded from the Seattle National Bank to General Dodge, and in the event there should ever be any occasion to foreclose this mortgage which was to be taken, that he would act as trustee for General Dodge in that matter; the idea being that it would avoid some trouble to General Dodge and would simplify any action which might become necessary in foreclosing the mortgage.

Mr. KING.—I move to strike that out as being a conclusion of the witness—I move to strike out all the answer beginning with the words “the idea being.”

Mr. BOGLE.—(Continuing.) Mr. Pusey, as I recall the matter now, had drawn up a memorandum by which Mr. Waterhouse was named to act as trustee for General Dodge, and Mr. Waterhouse asked me whether there was any objection to his doing so. I looked over the agreement, as prepared by Mr. Pusey, and stated that I saw no objection to it, provided an additional clause was added which exempted him from any liability as trustee so long as he acted in good faith. Mr. Pusey said it was satisfactory, and I accordingly added that clause to the agreement, which was then written out and signed by Mr. Pusey and Frank Waterhouse. Pursuant

(Testimony of W. H. Bogle.)

to that a note was taken from the North Alaska Steamship Company to Frank Waterhouse & Company, as trustee for General Dodge, for the \$10,000, payable sixty days after date. Frank Waterhouse & Company thereupon signed a bill of sale for the "Garonne" to the North Alaska Steamship Company. Mr. Charles B. Smith, as president of the North Alaska Steamship Company, signed the three notes, two to Frank Waterhouse & Company, payable in twenty and forty days, aggregating something over \$37,000, and one in favor of Frank Waterhouse & Company, as trustee, for \$10,000, payable in sixty days. Mr. Smith, as president of the North Alaska Steamship Company, also signed the mortgage which I had drawn securing those debts. I stated at the time to both Mr. Smith and Mr. Pusey that it would be necessary to have the mortgage signed by the secretary of the company, who was then in New York, to have the seal attached to it, and to have the execution of the mortgage approved or authorized by the Board of Directors of the North Alaska Steamship Company. It was then agreed between us that the bill of sale and the mortgage should be forwarded by Frank Waterhouse & Company to the Chase National Bank, in New York, with instructions to that bank to deliver the bill of sale when the execution of the mortgage was completed

(Testimony of W. H. Bogle.)

by proper resolution of the Board of Directors and by the signature of the secretary and the affixing of the seal. My recollection is that three notes, which were signed by Mr. Smith for the North Alaska Steamship Company, were left in the possession of Frank Waterhouse & Company to await the return of the mortgage after it should be executed. Mr. Smith stated that he would immediately wire his New York associates the condition of things, and ask them to put themselves in readiness to raise whatever money was necessary to pay any balance on the supply bills and lien debts against the ship. That was the situation of things when the "Garonne" sailed for Nome. The bill of sale to the "Garonne" was executed by Frank Waterhouse & Company on the second day of June, 1904. I have that original bill of sale in my possession, and will exhibit it to counsel and make it an exhibit to my testimony if he desires to do so.

Mr. KING.—I do not desire it as an exhibit.

Mr. BOGLE.—(Continuing.) The mortgage is not in my possession. It was sent to New York under the arrangement above stated, and I do not recall that I have seen it since it was returned from the bank. I presume it was in the possession of Frank Waterhouse & Company.

(Testimony of W. H. Bogle.)

Mr. King, the solicitor for the complainant in this case, has just called my attention to Complainant's Exhibit No. "4" in this case (showing); that exhibit is a copy of the mortgage I have referred to, except that the original was signed "North Alaska Steamship Company, by Charles B. Smith, President"; the secretary's signature being left blank; while the copy which Mr. King has exhibited in this case does not contain the signature of Mr. Smith, and I presume that this is a copy of the mortgage which was furnished to Mr. Pusey by me before Mr. Smith signed it.

Mr. KING.—That is what he claims it to be.

Mr. BOGLE.—(Continuing.) Mr. Pusey left Seattle, either on the day or the day following the signing of these papers, and I have never seen him since.

Sometime about the middle of June a Mr. S. C. Mead from New York appeared in Seattle and represented that he was one of the parties interested in the North Alaska Steamship Company, and he was here to look into the condition of affairs and make a report to the other interested parties in New York. He spent several days here—my recollection is about one week. By that time practically all of the outstanding bills against the "Garonne" for supplies

(Testimony of W. H. Bogle.)

and material had been handed in, and it appeared that the amount thereof was much larger than had been estimated at the time Mr. Pusey was here on June 1st and 2d. After Mr. Mead had made an investigation in Seattle and obtained such information as he was seeking, he requested Mr. Waterhouse and myself to return with him to New York, in order that a full explanation of the situation might be made to all of the parties interested there, and that some adjustment of settlement might be reached, and, on Mr. Waterhouse's request, I went with him and Mr. Mead to New York. We reached there the latter part of June or the first of July. On the afternoon of the day that we arrived Mr. Mead arranged for and called a meeting of the parties interested in the North Alaska Steamship Company and in the Occidental Securities Company, which was also a New York corporation, and which they represented, held the stock of the North Alaska Steamship Company. That meeting was held in the office of the Merchants' Association of New York, Mr. Mead being secretary of that association. There was present Messrs. McKee & Frost, attorneys for the North Alaska Steamship Company and Occidental Securities, Mr. J. B. Leake, who was secretary of one or both of those companies, Mr. W. H. Rowe, Mr. William F. King, a Mr. Corwine, Mr. Arthur J. Bald-

(Testimony of W. H. Bogle.)

win, an attorney who represented some of the parties interested in these companies, and also several other gentlemen whose names I either did not hear, or if I did, I have forgotten. At this meeting, Mr. Mead made a report of the result of his investigations of the condition of affairs at Seattle. He reported the amount of the balance due on the purchase price and the approximate amount of the outstanding bills for supplies, materials, etc. Mr. Waterhouse furnished such additional information as was called for by any of the parties at the meeting. In the course of the discussion it developed that there was a lack of harmony among the parties in interest there. Mr. King and some of his associates charged the officers of the Occidental Securities Company and the North Alaska Steamship Company with having procured his subscription by false representations as to the title to the ship and the condition of the company. This wrangle continued until late in the afternoon, and the meeting was finally adjourned over, either the next day or the second day thereafter. We continued in negotiating, endeavoring to get those people to make some arrangement that would raise the money to pay off the balance due on the ship and made various propositions, one of which was that if they would raise cash to pay these lien debts

(Testimony of W. H. Bogle.)

against the ship, that Mr. Waterhouse would take the notes of the company, secured by a mortgage on the vessel for a much longer time than that mentioned in the agreement made with Mr. Pusey—my recollection is that Mr. Waterhouse proposed to extend his debt to six, twelve and eighteen months, if all other debts against the company should be paid off by the parties interested, so that his debt be the first lien against the ship, and the company would be in a sound financial condition. That proposition was entertained for several days, and the parties were negotiating to raise the money with which to carry it out. Mr. King at one time indicated that he and his associates would raise the money to pay off those debts and take a second mortgage upon the ship for the amount thereof. During the time these negotiations were going on a great many people in New York, who were strangers to me, appeared one time or another in these various meetings, most of them were parties who claimed to be creditors of either the North Alaska Steamship Company or the Occidental Securities Company, and claimed to have some kind of assignments or securities, which gave them some kind of a claim against the “Garonne”; one of the parties who claimed to be a creditor was represented by his attorney who came around to see me and stated he had a maritime lien upon the “Ga-

(Testimony of W. H. Bogle.)

ronne" for his client by reason of the fact, as he claimed, that the money advanced by his client had been used in paying for supplies and material which were liens against the ship. I inquired during the times these negotiations were going on, whether General Dodge could be induced to attend any of the meetings, or could be reached. Mr. Corwine told me that he was under the impression General Dodge was out of the city, but that he would make inquiries and let me know the next morning. The next day either Mr. Corwine or Mr. Mead, I think it was Mr. Corwine, reported that General Dodge was out of the city, and my recollection is that he was represented to be abroad; at any rate the report was that he was out of the city and could not be reached. After that I made no further efforts to reach him. I did, at various times in those meetings, request or suggest to the Occidental Securities Company people and the North Alaska Steamship Company people, that all parties interested as creditors or otherwise, should be consulted with the view to getting them all united and raise the money to pay off those debts. On either the 7th or 8th of July we held a meeting at the said Merchants' Association office at which Mr. King represented that he would not undertake to raise the money estimated to be about \$35,000, to pay off these lien debts. He represented that the

(Testimony of W. H. Bogle.)

Occidental Securities Company, in which he was interested, not only held the stock of the North Alaska Steamship Company, whose only property was the interest in the steamship "Garonne," but that it had some six or eight, or possibly more mining companies in the Nome, Alaska district, which had been located and inaugurated by Mr. W. H. Rowe, and they considered that these mining properties afforded a prospect of being very valuable properties after they were developed. He said that he and his particular associates had already advanced some \$30,000 to the Occidental Securities Company, and that it would take \$30,000 more to buy the dredgers and other machinery that was necessary for developing and working these mining properties; that the company was looking to him and his particular associates to raise that money; that he had to elect whether he would raise the money to pay off and save the "Garonne" to the company, or raise the money to purchase the machinery and develop these mining properties, as he was not able, or not willing, to undertake to raise the amount which would be necessary for both enterprises, and after consultation with the parties whom he had expected to be associated with him in these future advances, they had concluded that the mining enterprise afforded

(Testimony of W. H. Bogle.)

the better prospect of satisfactory returns, and that he, therefore, would decline to advance any more money on the steamship end of the business. The other parties interested in the Occidental Securities Company and the North Alaska Steamship Company stated that that practically put an end to any hope of their raising any more money. I then served notice on the North Alaska Steamship Company that they had not kept, and had forfeited the terms of their contract, and that unless they immediately complied with their contract Frank Waterhouse & Company would declare the payments theretofore made by them forfeited and their right to purchase forfeited; a copy of that notice is filed with the deposition of Frank Waterhouse and is marked as Defendants' Exhibit "L-3." That, as I now recall, was on the 8th of July, it may have been on the 7th. On the morning of the 9th of July, Mr. McKee, the attorney for the North Alaska Steamship Company, served on me a letter, a copy of which was filed with the deposition of Mr. Waterhouse and marked Defendants' Exhibit "M-3," the letter being signed "North Alaska Steamship Company, by J. B. Leake, Secretary." At the same time or immediately preceding or following the service of this letter, he also furnished me a copy of the resolu-

(Testimony of W. H. Bogle.)

tion of the Board of Directors under date of July 8th, a copy of which is filed as an exhibit to Frank Waterhouse's deposition and marked as Defendants' Exhibit "K-3." After the receipt of this notification from Mr. McKee, I took the matter up with him, and after some considerable discussion he agreed that he would recommend to his company not to assert any claim for return of the moneys that they had paid, nor to engage in any litigation about it, provided full receipts were exchanged between Frank Waterhouse & Company and the North Alaska Steamship Company, so that Waterhouse should not assert any further claim against the company and the company would not assert any further claim against Frank Waterhouse & Company. He afterward, and during the same day, furnished me with a copy of the resolution of the Board of Directors, under date of July 9th, a copy of which is filed with Mr. Waterhouse's deposition and marked as Defendants' Exhibit "J-3." Thereupon receipts in full were passed between Frank Waterhouse & Company and the North Alaska Steamship Company, each releasing the other from any further claims. I should have stated that in this arrangement with Mr. McKee it was stipulated that Frank Waterhouse & Company should not assert

(Testimony of W. H. Bogle.)

any claims to the freights that were payable at Nome on the cargo carried up on the "Garonne," those being the freights that had been transferred by Mr. Smith to Mr. Pusey. I have here a copy of the release executed by Frank Waterhouse & Company to the North Alaska Steamship Company. The release executed by the North Alaska Steamship Company to Frank Waterhouse & Company was in the same form as the copy now presented, except that it was executed by the North Alaska Steamship Company to Frank Waterhouse & Company, instead of by Frank Waterhouse & Company to them. I herewith hand the master a copy of the release referred to, and ask that it be marked as an exhibit to my deposition.

(Document produced and presented by the witness is marked Defendants' Exhibit "Q-3.")

(Whereupon further proceedings are adjourned until 2 P. M.)

April 27, 1905, 2 P. M.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

Mr. BOGLE.—During the time of these negotiations in New York Mr. Waterhouse requested his office in Seattle to wire him what amount of outstanding bills against the North Alaska Steamship

(Testimony of W. H. Bogle.)

Company for material, supplies, labor, etc., had been up to that date turned into the office, and which remained unpaid. He received a telegram from his office under date of July 7 furnishing that information and which is Complainant's Exhibit No. 11 in this case.

Immediately after the North Alaska Steamship Company abandoned their contract, and sometime during the same day, Mr. Waterhouse and I obtained a conference with Mr. W. F. King, of Calhoun, Robbins & Company, and Mr. Waterhouse made complaints to Mr. King to the effect that he felt he had been badly treated by these New York parties, Mr. King and his associates, in this transaction. He stated to him that he had been assured from the time of the original contract of sale that they would carry out the contract and make their payments and would take care of whatever debts were incurred against the ship, and that even so late as the time of Mr. Mead's visit to Seattle, he had been assured by Mr. Mead that if he would come back to New York with him the matter would still be carried out, and that during all these negotiations that had been held, covering that length of time (he had been detained there something like eight or ten days), the same expectation had been held out, and that all at once Mr. King and his people had announced that they

(Testimony of W. H. Bogle.)

would hold on to their mining proposition and go ahead with that and drop the steamship matter, which left Mr. Waterhouse with the ship on his hands and bills that were due, and immediately payable amounting to over \$30,000; and that while he did not charge that Mr. King personally had been responsible for the default which had been made by the North Alaska Steamship Company and the Occidental Securities Company, that he did feel that those people, being Mr. King's associates, and that Mr. King himself, having protracted these negotiations in New York over so many days, Mr. King was under some obligation to assist Mr. Waterhouse in taking care of this very large indebtedness which existed against the ship, which was estimated by him at that time to be approximately \$35,000. Mr. King claimed that he had been misled by these New York people—

Mr. KING.—You are testifying to what conversations took place in your presence?

Mr. BOGLE.—(Continuing.) Yes; the three of us there together. He claimed that they had secured some \$30,000 out of him by misrepresenting the situation.

Mr. KING.—We move to strike out that answer as not competent and not in any way affecting the issues in this case; as to any controversy between

(Testimony of W. H. Bogle.)

Mr. King and his associates and as to the dealings between them.

Mr. BOGLE.—(Continuing.) But he stated at the same time that he felt himself that he owed something to Mr. Waterhouse, and if there was any practicable way that he could be of any assistance to him in taking care of this heavy indebtedness that was thrown back on him, if Waterhouse would suggest it that he would entertain it and see what he could do.

Mr. KING.—I object to that as irrelevant, immaterial and incompetent.

Mr. BOGLE.—(Continuing.) And he asked Mr. Waterhouse what suggestion he had to make along that line. Mr. Waterhouse said to him that the balance due on the purchase price was a little over \$37,000—I think exactly \$37,541—that if he had \$30,000 immediately available, it would enable him to take care of these outstanding bills against the “Garonne,” and whatever additional amount the bills amounted to he could take care of himself, and he proposed to Mr. King that if he, King, would put in \$30,000, that he, Waterhouse, would contribute the \$37,000 that was due to him, making the total of \$67,000, and that they would own the steamer in that proportion, and that he would use the \$30,000 contributed by King in relieving the steamer of any

(Testimony of W. H. Bogle.)

liens or encumbrances. He stated that he made this proposition because of the stress in which he found himself; that these debts of thirty odd thousand existing against the ship were liens and immediately payable, and that he was not in a financial condition himself to raise that amount of money to pay them. Mr. King said that he would think the matter over and talk with some of his friends or associates about it, and would give Mr. Waterhouse an answer later in the afternoon. During that afternoon he came to Mr. Waterhouse and said that he had considered the matter, and that under the circumstances he would accept that proposition with this qualification; that he would want an equal voice in the management of the corporation, and that he would suggest that their plan could be carried out by organizing a new corporation, fixing his capital stock at some nominal sum, one-half of which would be held by Mr. King and one-half by Mr. Waterhouse, and that they would convey this vessel to that corporation, and that corporation would assume the indebtedness to Waterhouse of \$37,000 and to King of \$30,000, and put it in the shape of notes or obligations of the company, so that in that way Waterhouse would get \$37,000 out of the earnings of the company while King was getting \$30,000, and after that their interest would be equal. Mr. Waterhouse accepted

(Testimony of W. H. Bogle.)

that proposition, and it was then reduced to writing and signed by the two of them. That agreement is dated July 9, and was executed in the office of Griggs, Baldwin & Baldwin in New York by Mr. King and Mr. Waterhouse in my presence on that day; a copy of which has been filed herein and marked Complainant's Exhibit No. "21."

Mr. KING.—I move to strike out all that part of the witness' testimony construing, or in any way explaining that agreement, as the agreement is sufficiently specific to explain itself and needs no construction, and it is the best evidence of what it contains.

Mr. BOGLE.—(Continuing.) Mr. Waterhouse and I left New York, either on the night of the day that agreement was executed or on the following day, and returned direct to Seattle.

The Merchants' & Miners' Steamship Company was subsequently organized by Mr. King in New York, pursuant to that agreement. That company, after it was organized, did execute notes to Mr. King aggregating \$30,000 and to Mr. Waterhouse aggregating \$37,000, but no mortgage was ever executed, so far as I know or have any reason to believe. Those notes were three notes payable to Mr. King for \$10,000 each, one due November 15, 1904, one due June 5, 1905 and one due November 15, 1905;

(Testimony of W. H. Bogle.)

and three notes payable to Frank Waterhouse & Company, one for \$12,000 due November 15, 1904, one for \$13,000 due June 5, 1905 and the other for \$12,000 due November 15, 1905. No payment was ever made on either of these notes. After the organization of the Merchants' & Miners' Steamship Company was completed in New York, a bill of sale was executed by Frank Waterhouse & Company conveying the steamship "Garonne" to that company, which bill of sale is of record as an exhibit in this case; the capital stock named in the Merchants' & Miners' Steamship Company was never issued nor subscribed for further than as appears by the agreement between Mr. Waterhouse and Mr. King heretofore referred to.

In addition to the liabilities that existed against the North Alaska Steamship Company and which were liens against the "Garonne," mentioned in the telegram to Mr. Waterhouse under date of July 7th, 1904, I would state that some time in September or August—August or September, 1904, a suit was brought in the United States District Court at Nome, Alaska, by one C. J. Jorgenson, libellant, against the steamship "Garonne" and the North Alaska Steamship Company, claiming a balance due the libellant from the North Alaska Steamship Company of \$3,625.02, which was claimed to be a lien against

(Testimony of W. H. Bogle.)

the "Garonne." That suit is still pending in the court at Nome, Alaska. I am not able to state, of course, for what amount the ship is liable in the case. That liability, however, whatever it was, was not included in the list of debts heretofore filed in this case and which have been referred to in the telegram above mentioned.

In April, 1905, the Merchants' & Miners' Steamship Company transferred and conveyed the steamship "Garonne" to the White Star Steamship Company and received in payment therefor \$90,000 par value, of the stock of this latter company. That stock was divided between Frank Waterhouse & Company and Mr. King's successor in interest, to wit, the Mead Development Company. Frank Waterhouse & Company receiving \$48,500 of the stock and the Mead Development Company \$41,500. Soon after the White Star Steamship Company acquired the boat, they chartered the steamer to one S. A. Sorebernick for one or more voyages carrying refugees from Shanghai to Odessa. The vessel made the trip and arrived in the Black Sea about July 10, 1905, and, owing to the disturbance at Odessa, she proceeded to Theodosa and discharged the refugees there. The charterer, although obligated to redeliver the ship at Seattle, abandoned the charter in the latter part of July, or early in August, 1905, while the

(Testimony of W. H. Bogle.)

vessel was at Theodosia in the Black Sea. The owner, after endeavoring to find some other employment for the vessel, subsequently sold her to some parties in Genoa, Italy, at about \$40,000. This vessel was purchased by Frank Waterhouse & Company, Limited, in London, about 1896 or '97 for \$50,000.

Mr. KING.—I move to strike out that last statement as irrelevant, immaterial and incompetent.

Mr. BOGLE.—I think that covers everything that I know about this case.

Cross-examination.

Q. (Mr. KING.) You say in January, 1904, you were secretary of Frank Waterhouse & Company?

A. I was.

Q. And continued as secretary since?

A. I have.

Q. And are still secretary?

A. I think so.

Q. Why do you say "I think so," Mr. Bogle; don't you know?

A. The meetings of the stockholders and board of trustees of that company have been very irregular, inasmuch as the stock is held in very few hands. I say "I think I am still secretary" because I have never been notified of any election of a successor.

(Testimony of W. H. Bogle.)

Q. As far as you know you are still secretary?

A. Yes.

Q. During that time you were also a stockholder?

A. No, sir, I never have been a stockholder, except to hold one share for qualification.

Q. During all this time you have represented Mr. Waterhouse as his attorney, and that company as its attorney?

A. Yes, sir.

Q. You have spoken in your direct examination of a receipt which was executed to Ferguson on the first payment on the "Garonne"; that first payment was \$1,000, wasn't it?

A. Yes.

Q. And do you know that General Dodge ever saw that receipt or any of the conditions it contained?

A. I do not.

Q. Do you know where that receipt is now?

A. I think I saw a copy of it in these exhibits (referring to documents). I will answer that I do not know where the original receipt is. When the second payment of \$14,000 was made on February 15, there was a similar receipt executed for that money, except that it ran to C. B. Smith, while my impression is that the first one ran to W. E. Ferguson. I find a copy of that second receipt is filed here as Defendants' Exhibit "B-3" to Frank Waterhouse's deposition in this case. My recollection is that I drew both receipts and they were in practi-

(Testimony of W. H. Bogle.)

ally the same terms, except as to the amount and and except as stated above that I think the first one ran to W. H. Ferguson, although I am not sure of that.

Q. Who was Ferguson, Mr. Bogle?

A. I do not know. I never heard of him prior to this transaction.

Q. Wasn't he a ship broker?

A. I do not think so, although I do not know positively.

Q. Wasn't he employed by Frank Waterhouse & Company to obtain a purchaser for the "Garonne"?

A. I never understood that he was.

Q. Wasn't he to get a commission on the sale to the North Alaska Steamship Company people?

A. I have no personal knowledge of that, but I do have an impression that I was so told at the time, but my understanding was that he came to Frank Waterhouse with the purchaser without disclosing names and said it was New York parties, and the deal was negotiated on that line, and at that time, or some subsequent time, Mr. Waterhouse agreed to pay him a commission if the sale was effected.

Q. Do you know whether or not he has been paid the commission?

A. I do not. I have no personal knowledge of any of the payments or of any of the disbursements in this case.

(Testimony of W. H. Bogle.)

Q. Was he at any time employed by Waterhouse during those negotiations in any other capacity?

A. Nothing that I ever heard of.

Q. Were you present with Pusey and Smith and Waterhouse when the statement was made as to the \$14,000 worth of indebtedness against the "Garonne," on or about June first or second?

A. Yes, I was present when that statement was made, but I am not sure whether it was at the meeting when Mr. Smith was present or at the meeting when Mr. Pusey and Mr. Waterhouse were present, when Smith was absent.

Q. Was Pusey present at the meeting, whether Smith was there or not?

A. Pusey was present at the time this fourteen or fifteen thousand dollar estimate was made by some computation of the various accounts which had been either received at Mr. Waterhouse's office or received and reported by Mr. Hastings from the North Alaska Steamship Company office direct, or which were known by some of the parties to be outstanding, although not reported. It was not understood to be an accurate statement, but it was the closest estimate that they could make.

Q. It was made by Mr. Waterhouse, was it, from data in his office then?

(Testimony of W. H. Bogle.)

A. My recollection is the statement was made by Mr. Waterhouse as a thing which had been discussed by him and Mr. Pusey and accounts gone over before I arrived there. At any rate, I took it as an accepted fact that it was the best information they both had.

Q. And at that meeting it was understood by those present that that was practically the entire indebtedness against the ship outside of what was due on the purchase price to Waterhouse & Company?

A. It was thought it would not exceed \$15,000; that was on the first day that we had our meeting. On the next day other bills came in which would indicate it would run higher.

Q. It was thought, however, that the receipts from the passenger money would pay those bills or go a large way towards paying them?

A. Yes.

Q. Who received that passenger money?

A. I cannot state of my own personal knowledge; I can only give you what I understood at the time.

Q. Did you understand that Waterhouse & Company—that they passed through Waterhouse & Company's hands?

A. I understood that some of the freight bills were paid direct into Waterhouse & Company's office, some of them were paid direct into the North

(Testimony of W. H. Bogle.)

Alaska Steamship Company's office in charge of Captain Hastings, some of them were paid I think at the dock where the freight was delivered, and some of the passenger money was paid into Captain Caine's office; who was acting as agent for securing passengers for the ship.

Q. But this money eventually all came to Waterhouse, didn't it? A. I think so.

Q. And Waterhouse & Company were agents for the ship and Caine, if an agent at all, was a sub-agent under Waterhouse.

A. Waterhouse was agent for the ship and was to receive, as I understood, a commission upon the gross passenger and freight receipts. Caine, as I understood, was appointed by either Ferguson or Hastings, but I may be in error about that; in fact I do not think I ever knew who had made his appointment. Mr. Waterhouse insisted that all receipts should come to his office, because he claimed the ship belonged to him and he was vitally interested in seeing that the debts against her were paid, as far as those receipts would pay them.

Q. There was also an agreement or understanding, was there not, that no bills should be incurred without Waterhouse's sanction?

A. I do not think there was any agreement to that extent. My understanding was that early in

(Testimony of W. H. Bogle.)

the negotiations or in the proceedings, say in February or March and possibly in April, that Waterhouse permitted the North Alaska Steamship Company, through its representatives, to take only a qualified possession of the ship; that is, he had Captain Jordison as his own agent in charge of the ship, but those other people were permitted to send their representatives on board and make some changes and alterations which they thought were desirable, with the understanding that all such expenses would be paid for by the North Alaska Steamship Company immediately, and no debts would be incurred against the ship. It was sometime after the original contract before I ever heard of any debts being incurred against the ship, and from that time on Mr. Waterhouse was very diligent in endeavoring to get them paid up.

Q. You know, don't you, Mr. Bogle, that Mr. Waterhouse insisted on an agreement that no indebtedness should be incurred against the ship without his permission?

A. I cannot say that I know of such an agreement, because I never heard that agreement entered into between him and those people. I can say this; that I was told by him at the time that he would not permit them to incur any indebtedness against the ship without they provided a fund at the time to

(Testimony of W. H. Bogle.)

pay it and, of course, he would have to have knowledge of it in order to carry out that kind of an arrangement; but that is what he told me and it was in accordance with the advice I gave him.

Q. Do you know of any freight money being received after the ship arrived at Nome?

A. No, I do not. I do not know anything about it at all; I was not at Nome and I do not know.

Q. I mean, received here by Waterhouse & Company?

A. No. My understanding has always been there was none. The report that was made in New York, or possibly I got that information after I returned to Seattle; at any rate after the ship returned here, was that these freight moneys had been collected by Mr. Smith and used in connection with those various enterprises up there—the Desota Mining Company is one of them, and some other company that they called the Rowe Mining Company, I think it was, but that is mere hearsay, I do not know of my own knowledge. I might add, in order to give you every information that I have in regard to it; my recollection is that there was some amount, probably about \$900, that was received by the ship on passenger money on the southbound voyage, which went into the hands of Waterhouse & Company after the ship returned down here; that was not freight money on the north-

(Testimony of W. H. Bogle.)

bound, but passenger money on the southbound voyage.

Q. When was that received, do you say?

A. Shortly after the ship returned from Nome; brought down by the purser, collected by him from passengers on the southbound trip.

Q. What was done with that money, do you know?

A. It was turned into the office of Waterhouse & Company, as far as I know.

Q. Was it applied against the indebtedness on the ship, do you know?

A. I have no personal knowledge. The account which you have from Mr. Townsend shows what the amount was and how it was paid. I have no personal knowledge of it.

Q. The instructions which you state in your direct examination were given to the Chase National Bank when the bill of sale and mortgage were sent to the bank, were in writing I presume?

A. Yes.

Q. You have not got a copy of them?

A. Yes; a copy of the letter accompanying the papers is made an exhibit to the deposition of Mr. Waterhouse.

(Testimony of W. H. Bogle.)

Q. You said that S. C. Mead came to Seattle about the middle of June representing the New York parties; did he state whom he represented?

A. He said that he represented the parties interested in the North Alaska Steamship Company and Occidental Securities Company.

Q. Did he state that he represented General Dodge?

A. No, I do not think he referred to General Dodge.

Q. At this time, or about this time, you testified that it was ascertained that the bills against the ship were much larger than they were supposed to be when Mr. Pusey was here? A. Yes.

A. Yes.

Q. Do you know whether Mr. Pusey or General Dodge ever had any information as to that excess of bills? A. Up to what time?

Q. Up to the time that Mr. Mead came to Seattle.

A. I have no information on that subject at all. My information was that Mr. Pusey went from Seattle south, and from there to Texas, and did not return to New York until after Mr. Waterhouse and I had left New York and came back to Seattle.

Q. As far as you know, neither Pusey or Dodge had any knowledge of that increase of indebtedness.

(Testimony of W. H. Bogle.)

A. At that time, no.

Q. Nor until you left New York?

A. Not so far as I know. The New York people all knew it, and whether they communicated it to General Dodge or not, I do not know.

Q. At the meeting in the office of the Merchants' Association of New York in the early part of July, do you know of your own knowledge whether or not General Dodge or anyone representing him was present?

A. If General Dodge was present I think I would have known it. I do not think, and I feel quite sure he was not present, although I did not know General Dodge. If anybody especially represented him I had no knowledge of it. There were quite a number of people there whose relations to the company were unknown to me.

Q. Whereabouts is the Merchants' Association, whereabouts in New York?

A. It is in the New York Life building on Broadway, but I am not able to give you the number, I do not know.

Q. About how far up on Broadway, do you know?

A. No, I could not tell you that.

Q. And it was at this meeting that Mead made his report as to what he had ascertained in Seattle

(Testimony of W. H. Bogle.)

as to the debts against the ship and matters generally out here.

A. Yes, at the first meeting he made that report.

Q. Was that a written report or verbal report?

A. My recollection is that he had a lot of data in the shape of accounts and statements and figures, but he did not read the report, but he used that data in making his verbal report. I do not know whether he ever made a written report or not. This was not a company meeting, but a meeting of all parties, creditors of the company and stockholders and Mr. Waterhouse and myself.

Q. Complainant's Exhibit No. 9 is an account of the debts; debits and credits against the steamship "Garonne," which was afterwards paid by Frank Waterhouse & Company, or at least by the money furnished by Mr. King (showing); is that the debt which you mean when you speak of those debts which were liens against the ship?

A. Yes. Your question, so far as it states the method of payment, is inaccurate. Mr. King's \$30,000 was paid into the Merchants' & Miners' Steamship Company.

Q. Well, there is no contention but what Mr. King's \$30,000 was applied in payment of this indebtedness, is there?

(Testimony of W. H. Bogle.)

A. None whatever as to the use that was made of it.

Q. So that is what you mean when you speak of liens? A. Yes.

Q. You do not contend that all these were maritime liens against the ship, do you, although they may have been money due Waterhouse & Company?

A. It was not the intention to pay any debt that was not a lien against the ship; I mean to pay any debt which had been incurred by the North Alaska Steamship Company. This company was not in any way assuming any of the debts of that company, but it was paying such debts as were liens against the steamship "Garonne," and I do not know of any claim that was paid that was not a lien against the ship.

Q. Do you consider that the payment of \$2,036.07, as 5% commission to Frank Waterhouse & Company on the "Garonne's" first voyage was a lien against the ship?

A. Well, I do not know whether an agent's commission on the freight money would be a lien or not.

Q. Now, about the payment of 2½% disbursement commission, amounting to \$897.27?

A. I think that would be regarded as a debt against the ship; whether it would be strictly a maritime lien or not, I am not prepared to say.

(Testimony of W. H. Bogle.)

Q. You say that you inquired, at this meeting, as to whether General Dodge could be reached. Of whom did you inquire, Mr. Bogle?

A. Mr. Corwine. That is, my recollection now is that it was Mr. Corwine that I spoke to about it; it is possible it may have been Mr. King and that he referred the matter to Mr. Corwine; at any rate the report came from Mr. Corwine the next morning.

Q. You made no other efforts to find General Dodge beyond those inquiries which you made?

A. No, I had no reason to. I want to state, however, that in the course of these negotiations and conference, it was understood by all parties there just what the condition of General Dodge's matters was; that he had a claim—he had a debt which he claimed was a debt of that company and that he had taken an assignment of those freight bills up North, and that he had this agreement that this company would execute a second mortgage to secure it, which was not done.

Q. That statement was made by you to them, wasn't it?

A. I do not know; I do not recall whether it was made by me or by Mr. Waterhouse or by some of the other parties; it was one of the facts of the situation which was understood by all the parties, and the statement was made by somebody, probably by me,

(Testimony of W. H. Bogle.)

although I do not now recall it. The status of a great many other creditors was mentioned at the same time by the parties who were familiar with it.

Q. At the meetings of the 7th and 8th of July in the Merchants' Association's office, was General Dodge or anyone representing him, present at any one of those meetings?

A. No. General Dodge, as far as I know, was never present or represented specially at any of those meetings?

Q. Do you know when the North Alaska Steamship Company served the notice of forfeiture on you; do you know whether General Dodge had any notice or knowledge of that? A. I do not know.

Q. As far as you know he did not?

A. Well, I do not know anything about it.

Q. During those meetings in the early part of July, at some one of them, you had an interview with Mr. McKee of McKee & Frost? A. Yes.

Q. In which they claimed that they had a lien against the ship for part of the purchase price that was already paid?

A. No. Mr. McKee never made that claim.

Q. He threatened litigation, didn't he?

A. Yes—

Q. And in order to avoid litigation—

(Testimony of W. H. Bogle.)

A. —let me explain a little further about Mr. McKee's attitude. The letter which he served set up such a claim and threatened litigation. Mr. McKee himself, when I discussed it with him, took a much more conciliatory attitude, and said they did not want any litigation, and while he did not, in express terms, admit that they had no claim against the ship for those moneys, he intimated or conveyed the impression to me that they had not any.

Q. Then you and Mr. McKay came to an agreement by which he would abandon any claim that he had, or thought he might have, to this purchase money, and you would release the North Alaska Steamship Company from any personal liability regarding this indebtedness.

A. No.

Q. And both gave receipts in full.

A. (Continuing.) The agreement we reached was that they would give a full release and waiver, or abandonment, or whatever it might be called, as to any rights under their contract of purchase, and and that Waterhouse would give a similar receipt or release and waiver of any claim against them for the balance of the purchase money, and that Waterhouse, in taking back his ship and waiving his claim against them, would take care of such of the material and lien debts created by the North Alaska Steamship

(Testimony of W. H. Bogle.)

Company at Seattle, as were liens against the ship, and would not assert any claim to the unpaid freight bills which had been collected by the North Alaska Steamship Company at Nome, being the claims which had been transferred to General Dodge.

Q. It really was a settlement between Waterhouse and the North Alaska Steamship Company, and after you got through you each quitclaimed one to the other.

A. We each executed a waiver or release of any claims one against the other; it was a settlement to that extent; we paid them nothing and they paid us nothing, and they abandoned all their rights under this option or contract to purchase the ship.

Q. That was done prior to any negotiations with Mr. King as to the advance of the \$30,000.

A. Yes, sir.

Q. Did Mr. King make that a condition precedent to his advancing any money? A. Make what?

Q. That the North Alaska Steamship Company should release the ship?

A. No. At the time we made this arrangement with Mr. King, Mr. McKee and I had already reached a settlement. I am not sure whether the papers had actually passed at that time or not, but it was all done.

Q. But King knew of this release then?

(Testimony of W. H. Bogle.)

A. Yes; he was present when Mr. Kee handed me the letter which I have referred to.

Q. How long after that was the interview with Mr. King and Mr. Waterhouse in which Mr. Waterhouse complained of being badly used?

A. It was very shortly afterwards.

Q. On the same day?

A. The same day, and my recollection is it was the same forenoon. When we had separated on the day before it was under consideration, the proposition of raising the money to pay off these debts and letting Mr. Waterhouse extend his debts to six, twelve and eighteen months, as he had offered to do as a final resort and we were under the impression that they were going to accept that proposition, but they came into the meeting the next morning and announced that they would not raise any more money for it whatever, and then, immediately accompanying that announcement Mr. McKee served this notice on me that I referred to.

Q. How long after that was the Merchants' & Miners' Steamship Company incorporated?

A. I cannot give you the exact date, because I have not the articles of incorporation. That was incorporated in New York after Mr. Waterhouse and I returned to Seattle.

Q. But shortly after?

(Testimony of W. H. Bogle.)

A. Shortly after, and pursuant to this agreement.

Q. The capital stock of that company was placed at \$100,000? A. Yes.

Q. You say it was never issued?

A. Never issued.

Q. Nor subscribed?

A. Nor subscribed any further than you will find in that agreement that I have referred to by Mr. King and Waterhouse; it was to be divided between them.

Q. Do you know of any assets that the Merchants' & Miners' Steamship Company had, except the "Garonne"?

A. None whatever. It had not either subscription contracts or assets of any other kind except that steamer.

Q. You stated that in addition to the debts that were mentioned in the telegram from Seattle at the time of these meetings in New York, there was a suit by Jorgenson then pending against the ship in Alaska.

A. No; I stated that the Jorgenson suit was brought against the ship during the latter part of August or the first of September following.

Q. Was not the Jorgenson claim known at the time of the settlement in New York?

(Testimony of W. H. Bogle.)

A. No, it had not been heard of.

Q. Is this the same Jorgenson who has testified in this case?

A. No; this man is C. J. Jorgenson.

Q. And the man who testified in this case was?

A. Jordison.

Q. They are two different people then?

A. Altogether different.

Q. And this Jorgenson who brought the suit was not in the employ of Waterhouse & Company at any time?

A. Never; he was a lightorage man at Nome.

Q. What was the claim for?

A. Captain Ferguson, on behalf of the North Alaska Steamship Company during the spring of 1904 had entered into a contract with Jorgenson employing him to do the lightorage for the "Garonne" at Nome for that year, and my recollection is, for a total period of three years, and he had also agreed to carry up certain lighters and boats and lumber for Jorgenson. This claim of Jorgenson was for a balance of the lightorage done for the "Garonne" on this voyage to Nome, and also a claim for damages for the failure to carry up those lighters and for failure to carry up some of the lumber which Ferguson had agreed to carry up.

(Testimony of W. H. Bogle.)

Q. Had this claim of Jorgenson anything to do with the claim of P. B. McLeod which you afterwards settled?

A. No. I might state that there was a claim of McLeod which had been filed and which was subsequently settled, and this claim of Jorgenson which is still pending, and we also had a suit by a man named Johnson seeking to enforce a claim against the ship which has been tried and a decision in favor of the ship, so that there was no liability in that case except the expenses attending the suit.

Q. What was the White Star Steamship Company capitalized for?

A. Three hundred and fifty thousand dollars. I might state that the White Star Steamship Company had been in existence several years prior to April, 1905, and its capital stock had been \$75,000. In April, 1905, Mr. Waterhouse, representing the Merchants' & Miners' Steamship Company, and Mr. Mark Reed, who was the manager of the White Star Steamship Company as it then existed, agreed on a merger or combination of the companies, and in connection therewith they were to buy the steamship "Ohio." The properties that were owned by the White Star Steamship Company at that time were put in at a valuation, and the capital stock of the company was increased from \$75,000 to \$350,000.

(Testimony of W. H. Bogle.)

The old stockholders received new stock for the valuation of the property they put in, and the Merchants' & Miners' Steamship Company received stock for the "Garonne" which they put in, and the Arlington Dock Company received stock for the dock leases which they put into the company, and the new company purchased the "Ohio."

Q. Then the capital stock of the White Star Steamship Company was practically paid up?

A. Yes, there was \$325,000 of it was paid up.

Q. Was not the ship appraised prior to her being put into the White Star Steamship Company?

A. No.

Q. Wasn't she valued or appraised by this man Fowler and another man?

A. Not for any purpose connected with that deal, so far as I ever heard.

Q. Wasn't she appraised?

A. I don't know whether she was or not; she may have been at some time, but she was not in connection with that deal.

Q. Then you do not know whether or not she was appraised after she became the property of the Merchants' & Miners' Steamship Company?

A. No, I do not. I do not know of any purpose for which she would have been appraised, unless it

(Testimony of W. H. Bogle.)

may have been some matter in connection with insurance.

Q. You do not know the purpose for which she was appraised by Fowler and Wiley, in March, 1905?

A. I do not.

Q. Was that prior or subsequent to her sale to the White Star Steamship Company?

A. What is the date?

Q. The date is not given any closer than that.

A. If it was in March it was prior to the consolidation with the White Star Steamship Company; my recollection is that that combination went into effect about the 13th or 14th of April.

Q. The only date given is March, 1905.

A. That was prior to the consolidation.

Q. Do you know whether or not she was valued in the charter party to Serebrenick?

A. She was not.

Q. Was she insured for the benefit of the owners during that charter party?

A. I understood she was.

Q. Do you know to what amount?

A. I do not. I could find out from the statement, but I cannot quote it from memory; my recollection is that you have that statement in your papers.

Q. Who was this man Serebrenick?

(Testimony of W. H. Bogle.)

A. I do not know anything about him, except that he, acting through some San Francisco brokers, chartered this ship.

Q. Are you acquainted with the difference in value, if any, of ships in London and on this coast?

A. I am not.

Q. You do not know as a fact that they fetch a much better price here than they do there?

A. I think it would depend on the character of the ship, the size and tonnage.

Q. Do you know anything about the condition of the ship prior to her sailing for Nome on that voyage of June 2d, 1904?

A. Nothing of my own knowledge; she was understood to be in good condition.

Q. I think that is all.

Mr. BOGLE.—(Continuing.) I might state in that connection that the "Garonne" was a ship that has required a great many repairs every year. She was an expensive ship to maintain and an expensive coal-burner and with a very small cargo carrying capacity compared with her registered tonnage, and not well adapted to any business on the Pacific Coast.

(Testimony of witness closed.)

Here defendants rest.

May 6th, 1906, 10 o'clock A. M.

The testimony in behalf of defendants being closed, solicitor for complainant makes the following offers of testimony in rebuttal:

Mr. KING.—Complainant now offers in evidence in rebuttal certified copy of the certificate of incorporation of the Merchants' and Miners' Steamship Company of New York.

Mr. BOGLE.—Defendants object to the introduction of the same in evidence on the ground that the same is irrelevant, immaterial and incompetent.

(Document received in evidence and marked "Complainant's Exhibit No. 25.")

Mr. KING.—Complainant now offers in evidence in rebuttal certified copy of the certificate in payment of entire stock of the Merchants' and Miners' Steamship Company of New York.

Mr. BOGLE.—Defendants object to the introduction of the same in evidence on the ground that the same is irrelevant, immaterial and incompetent.

(Document received in evidence and marked "Complainant's Exhibit No. 26.")

Whereupon all parties rest and the testimony is closed.

I hereby certify that the foregoing depositions of said witnesses were taken by said Master and by said Special Examiner, and reduced to writing and

are herewith returned, and the foregoing are such depositions and the whole thereof; that the reading and signing of the depositions of each and all of said witnesses by said witnesses were, by the witnesses themselves and the solicitors for the respective parties, waived.

That the exhibits herewith returned and duly marked, were during the taking of said depositions, as appears in said record, offered in evidence by the respective solicitors for the parties, and are certified and marked as such exhibits.

That the taking of said depositions was adjourned from time to time to suit the convenience of the parties and solicitors, and occupied six days; that the compensation of said Master and said Examiner is as follows: \$209.50; and said depositions as said exhibits, so as aforesaid mentioned, are all of the proofs and testimony taken in said cause, and the same are herewith returned.

All of which is respectfully certified.

N. W. BOLSTER,
Special Examiner.

[Endorsed]: Testimony. Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Complainant's Exhibit No. 8.

Register No. 54	Official Number,
	Numerals Letters.
Permanent.	86504 KPTW

COPY OF CERTIFICATE OF REGISTRY.

In pursuance of chapter one, title XLVIII, "Regulation of Commerce and Navigation," Revised Statutes of the United States.

Frank Waterhouse, of Seattle, Washington, President, having taken and subscribed the oath required by law, and having sworn that the Merchants and Miners Steamship Company, of New York, a corporation organized under the laws of the State of New York, as the only owner of the vessel called the Garonne of New York whereof John Gordeson is at present master, and is a citizen of the United States; and that the said vessel was built in the year 1871, at Glasgow, Scotland, as appears by P. R. #108, issued at Port Townsend, Wash., May 4, 01; surrendered, O. & Dist. Changed; and said Register having certified that the said vessel has four decks and three masts, and that her length is 371 and 0 tenths feet, her breadth 41 feet and 4 tenths, her depth 20 feet and 4 tenths, her height feet and tenths; that she meas-

ures Twenty-three hundred nineteen tons and hundredths, viz:

	Tons	100ths.
Capacity under tonnage deck.....	1938	19
Capacity between decks above tonnage deck	1962	93
Capacity of inclosures on the upper deck, viz:.....	44	54
	3945	
Gross Tonnage		

Deductions under Section 4153, Revised Statutes, as amended by Act of March 2, 1895:

Crew space, 233.79; Master's cabin.....		233.79
Steering gear; Anchor gear, 46.62; Boat-swain's stores, 71.12.....		117.74
Chart-house; Donkey engine and boiler; Storage of sails 12.03; Propelling power 1262.61		1274.64
	Total Deductions	1626.17
	Net Tonnage	2319.

The following—Described spaces, and no others, have been omitted, viz:

and that she is a Screw Steamer (iron), has a figure head and an elliptic stern; and the said having agreed to the description and admeasurement above specified, according to law, said vessel has been duly registered at the Port of Port Townsend, Washington.

Given under my hand and seal, at the Port of Port Townsend, this 6th day of August, in the year one thousand nine hundred and four.

Place for seal of	No.	Place for seal
Naval Officer.	Naval Officer.	of Collector.
		CHAS MILLER,
		Deputy Collector of Customs.

[Seal of the United States Treasury.]

E. T. CHAMBERLAIN,
Commissioner of Navigation.

[Endorsed also]: Deft. F. Waterhouse, Exhibit 8. Filed before Eben Smith, Master In Chancery, United States, Western District of Washington, Northern Division. Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore Dep.

Complainant's Exhibit No. 9.

INDEBTEDNESS NORTH ALASKA STEAMSHIP CO.

Statement from Seattle books of the Merchants & Miners S. S. Co.

1904

July 19, Commercial St. Boiler

Works	1,485.27
Frye Bruhn Co., Inc.	2,689.78
Gorham Rubber Co.	52.70
S. Hyde	48.50

Johnson & Higgins....	325.00
Kilbourne & Clark Co..	819.09
King & Winge, bal- ance	1,725.60
McCabe & Hamilton, Inc.	980.27
South Prairie Coal Co.	503.70
Star Publishing Co....	28.09
Times Printing Co....	57.20
Foster & Kleiser.....	16.00
20, Frank Waterhouse & Co. Inc. 5% commis- sion on "Garonne" Voy. 1 earnings....	2,036.07
21, Frank Waterhouse & Co. Inc., balance 2½% disbursing com- mission	597.27
22, Western Union Tel. Co.	64.66
Pacific Tribune Pub. Co.	50.00
Daily Gazette	12.50
The Guide	6.50
City Dye Works.....	4.00
Post Intelligencer Co...	49.12
Globe Wall Paper Co...	1.00
Frank Waterhouse &	

	Co. Inc., Insurance	
	Feb. 14th to May	
	30th	382.83
	March telegrams	12.17
	Montana Stables	2.00
	MacDougall & South-	
	wick Co.	584.31
	Sunde & Erland Co.	429.83
23,	J. R. Mason, Harbor	
	policy	164.08
23,	J. R. Mason, Harbor	
	policy	54.69
	J. R. Mason, London	
	policies	4,471.09
25,	M. Seller & Co.	387.50
27,	E. E. Caine, commis-	
	sion	892.25
29,	J. Sullivan, wages in	
	May	2.50
	J. Still, wages in May..	4.00
Aug. 1,	O. A. Johansen, Master,	
	July 1st, 16th.	128.17
4,	Lewis, Foard, Anderson	
	& Co.	161.50
	Pacific Coast Co.	4,271.45
9,	Paid Arlington Dock	
	Co., McDowells de-	
	posit to apply on Ry.	

	freight on cargo for	
	“Garonne”	30.00
Sept. 2,	Seattle Hardware Co..	1,788.83
	Standard Furniture Co.	451.15
Oct. 5,	Schwabacher Bros. &	
	Co.	2,874.13
Nov. 18,	O. A. Johansen, Mas-	
	ter, July 17 to Aug. 1.	90.67
Dec. 19,	W. M. Johnson.....	127.00
Jan. 31,	1905, P. B. McLeod...	300.00
	1904	

Credit.

Aug. 3,	Bowen & Co., for pota-	
	toes returned	31.63
Oct. 5,	Part of purchase price	
	of ss. “Garonne”....	30,000.00

1905

Feb. 18.	Return premium Lon-	
	don ins. policies while	
	“Garonne” in harbor	
	July 3d to August	
	23d	568.35

29,162.47	30,599.98
	29,162.47

Credit balance,	1,437.51
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[Endorsed]: Complainant’s Exhibit 9. Filed in the U. S. Circuit Court, Western Dist. of Washing-

ton. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Complainant's Exhibit No. 10.

S. S. "Garonne"

4,000 Tons.

Sailing June 2d, 1904 at 7:30 P. M. Sharp.

For Nome, Solomon, Bluff City, Golovin Bay, connecting at Golovin Bay for White Mountain and Council City. Connecting at Nome for Tellar, York and Kotzebue Sound.

Through tickets and bills of lading to all Points.

Ticket Office,

608 First Ave.

Freight Office,

102 First Ave.

FRANK WATERHOUSE & CO., Inc., Agents.

[Endorsed]: Compl'ts. Exhibit 10. Eben Smith, United States Master in Chancery, Western District of Washington, Northern Division. Filed in the U. S. Circuit Court, Western Dist. of Washington, Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Complainant's Exhibit No. 11.

Copy.

TELEGRAM

Seattle, Wash., July 7, 1904.

Frank Waterhouse, Holland House, New York City.

Unpaid North Alaska bills thirty three thousand five hundred exclusive disbursing commission. Cash sixty two hundred. Obligations including rod, machine work, payroll this and next week, twenty two hundred fifty.

FRANK WATERHOUSE.

[Endorsed]: Pliffs. Exhibit 11. Eben Smith, United States Master in Chancery, Western District of Washington, Northern Division. Filed in the U. S. Circuit Court, Western Dist. of Washington, Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Plaintiffs' Exhibit No. 12.

(On Letterhead of Frank Waterhouse and Co. Inc.)

Seattle, Wash., July 20th, 1904.

(Duplicate.)

North Alaska Steamship Co., to Frank Waterhouse & Co., Inc., Agents. Dr.

For 5% commission on \$40,721.43 the earnings of The S. S. Garonne, Voyage 1, sailed from Seattle June 2d, 1904. \$ 2,036.07

Passenger earnings per manifest less re-		
bates	23,496.50	
Freight, per manifest	21,580.44	
Less proportion of river freight. . .	4,024.48	
	<u>17,555.96</u>	
Less rebate to Alaska Gold Mining		
Co.	331.03	17,224.93
	<u> </u>	<u>40,721.43</u>

July 20th, 1904.

Received from the Merchants' and Miners' Steamship co., two thousand thirty-six and 07/100 in settlement of above commission.

FRANK WATERHOUSE & CO. INC.

By J. P. TOWNSEND, Treas.

[Endorsed]: Plff's. Exhibit 12. Eben Smith, United States Master in Chancery, Western District of Washington, Northern Division. Filed in the U. S. Circuit Court, Western Dist. of Washington, Jun. 16, 1906, A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Plaintiff's Exhibit No. 13.

(On Letterhead of Frank Waterhouse & Co. Inc.)

Seattle, Wash., July 21st, 1904.

Duplicate.

North Alaska Steamship Co., to Frank Waterhouse & Co., Inc. Dr.

For 2-1/2 % disbursing com-
mission on \$32,578.13 \$814.45

Disbursements as follows:

Garonne repairs and port expenses	15,616.12
Garonne voyage 1	15,557.62
General expenses	279.39
Marine insurance	1,125.00
	<hr/>
	32,578.13

Received July 21st, 1904, from Merchants' and Miners' Steamship Co., five hundred ninety-seven 27/100 dollars in settlement of the balance of above account (two hundred seventeen 18/100 dollars having been paid from funds of North Alaska Steamship Co.)

FRANK WATERHOUSE & CO. INC.

By J. P. TOWNSEND, Treas.

[Endorsed]: Plff's. Exhibit 13. Eben Smith, United States Master in Chancery, Western District of Washington, Northern Division. Filed in the U. S. Circuit Court, Western Dist. of Washington, Jun. 16, 1906, A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Plaintiff's Exhibit No. 14.

(On Billhead of Frank Waterhouse & Co. Inc.)

Duplicate.

Seattle, Wash. June 14, 1904.

North Alaska Steamship Company, to Frank Waterhouse & Co., Inc. Dr.

For proportion of insurance from February

14th, 1904, to May 30th, 1904, on Western

policy #2672, issued November 30th,

1903, for \$75,000 on S. S. "Garonne,"

Total premium November 30th to May

30th, \$656.25, 3-1/2 months\$382.83

Paid July 22, 04.

FRANK WATERHOUSE & CO., INC.

By J. P. TOWNSEND, Treas.

[Endorsed]: Plff's. Exhibit 14. Eben Smith, United States Master in Chancery, Western District of Washington, Northern Division. Filed in the U. S. Circuit Court, Western Dist. of Washington, Jun. 16, 1906, A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Plaintiff's Exhibit No. 15.

Duplicate.

\$128.17.

Seattle, Washington, Aug. 1, 1904.

Received from the Merchants' & Miners' Steamship Company one hundred twenty-eight and 17/100

dollars, in settlement of services as Master of the S. S. "Garonne."

July 1st to 9th inc., 9 days at \$250 per mo. 75.00
July 10th to 16th, inc., 7 days at \$125 " 29.17
16 days board at \$1.50 per day 24.00

O. A. JOHANSEN.

[Endorsed] Plff's. Exhibit 15. Eben Smith, United States Master in Chancery, Western District of Washington, Northern Division. Filed in the U. S. Circuit Court, Western District of Washington, Jun. 16, 1906, A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Plaintiff's Exhibit No. 16.

Duplicate.

\$30.00.

Seattle, Wash., Aug. 9, 1904.

Received from the Merchants' & Miners' Steamship Company, thirty dollars, to apply on the Railway freight on cargo shipped by John C. McDowell from Chambersburg, Pa., for the S. S. "Garonne" Voyage 2.

ARLINGTON DOCK CO.

[Endorsed]: Plff's. Exhibit 16. Eben Smith, Master in Chancery, United States, Western District of Washington, Northern Division. Filed in the U. S. Circuit Court, Western Dist. of Washington, Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Plaintiff's Exhibit No. 17.

Duplicate.

\$90.67.

Seattle, Wash., Nov., 18, 1904.

Received from the Merchants' and Miners' Steamship Company, ninety 67/100 dollars, in settlement for services as Master of the S./S. "Garonne":

July 17 to Aug. 2, 1904, 16 days at \$125 per mo.	66.67
16 days' board at \$1.50 per day	24.00
	<hr/>
	90.67

And I hereby acknowledge settlement in full and release the S/S "Garonne" from all claims.

O. A. JOHANSEN.

[Endorsed]: Plff's. Exhibit 17. Eben Smith, United States Master in Chancery, Western District of Washington, Northern Division. Filed in the U. S. Circuit Court, Western Dist. of Washington, Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Complainant's Exhibit No. 19.

Cash Received from Chas. B. Smith and North Alaska Steamship Company, from February 3, 1904, to July 12, 1904, a/c "Garonne."

1904.

Feb. 3, Cash from New York	1,000.00
15, Cash from New York	14,000.00

Mch. 15,	Cash from New York	7,000.00
18,	Cash from New York	3,000.00
Apr. 11,	10 days sight draft on C. B. Smith	5,000.00
May 10,	Cash from W. H. Ferguson, T. M..	1,000.00
13,	Cash paid F. Waterhouse in New York April 24th	5,000.00
18,	Cash from W. H. Ferguson, T. M.	560.00
23,	Cash from New York	2,500.00
26,	Cash from New York	5,000.00
27,	Cash from New York	10,000.00
31,	Cash from W. H. Ferguson, T. M.	690.00
June 1,	Cash from W. H. Ferguson, T. M.	1,195.00
1,	Cash from New York	5,000.00
2,	Cash from W. H. Ferguson, T. M.	6,137.55
2,	Cash from L. H. Gray & Co.	2,650.50
3,	Cash from New York	1,060.00
3,	Cash from Arlington Dock Co.	5,248.49
3,	Cash from Chilberg & Fredericks. .	570.00
6,	Cash from Alaska Pacific Nav. Co.	2,933.46
6,	Cash from Alaska Pacific Nav. Co.	1,091.54
6,	Cash from L. H. Gray & Co.	50.00
6,	Cash from Arlington Dock Co.	399.37
9,	Cash John Jordison, balance from payrolls	49.49
9,	Cash Frank Waterhouse & Co. for Bonnell's tickets	150.00
25,	Cash Prepaid freight, J. C. Mc- Dowell	30.00

July 5,	Cash W. H. Ferguson, T. M., remittance from Nome June 24 on sale passenger tickets south	900.00
11,	Cash 1 day on payroll returned	2.00
19,	Returned from payroll by John Jordison	1.00
		82,218.40

Statement of the Disbursements of 82,218.40, funds received from Chas. B. Smith, and North Alaska Steamship Co., Account SS. "Garonne"

1904.

	Frank Waterhouse & Co., a/c purchase SS. "Garonne,"	48,600.00
Mar. 7,	Labor and Material, February	982.13
Apr. 7,	Labor and Material, March	1,098.90
May 5,	Labor and Material, April	1,076.90
	6, Western Union Tel. Co., April	11.80
	9, Postal Tel. Co., April	39.14
	10, Customs, entrance from Victoria	75.24
	21, King & Winge, on a/c	800.00
	23, S. W. R. Dally	122.43
	31, W. H. Morris, a/c painting	622.10
	Victoria Dry Docking a/c	1,979.31
	Funds advanced Captain Jordison for payment laborers	4,856.00
June 1,	J. M. Shawhan, Purser, a/c Port Payroll	756.25

2, J. M. Shawhan, Purser, a/e Port	
Payroll	181.00
2, John Hughes, Claim	75.00
6, S. S. "Garonne" Repairs & Port	
Expenses, D. C. Wilson	19.00
Diamond Ice & Storage Co	1.40
Henry Argens	93.10
City Dye Works	8.00
P. S. Dry Dock & Machine Co.	47.14
Tacoma Tug & Barge Co.	42.00
S. S. "Garonne" Voyage 1,	
Duwamish Dairy Co.	20.60
Cascase Laundry Co.	82.88
E. P. Burke	10.00
Max Kuner	115.60
Queen City Laundry	151.80
7, S. S. "Garonne" Voyage 1,	
C. H. Lilly & Co.	1,177.57
H. W. Moulton	467.10
Romans Photo Co.	18.40
Standard Oil Co.	235.24
Schwabacher Hardware Co.	66.34
Washington Fish Co.	149.02
Val. Schott.	20.00
G. Beninghausen.	2.50
Arlington Dock Co.	831.91
S. S. "Garonne" Repairs & Port	
Expense, A. F. Hutton	446.69

	Magnesia Asbestos Supply Co.	192.50
	Washington Mattress Co. . . .	176.85
	Walter Bowen & Co.	53.68
		<hr/>
	Forward	65,705.52
1904	Brought forward	65,705.52
June 9, SS.	“Garonne” Repairs & Port Expense C. M. Shaw & Co., on %	800.00
	J. Jordison, overseer, May	173.00
	Pilotage	240.00
	SS. “Garonne” Voyage 1	
	Chesley Tow Boat Co.	23.00
	Stevenson, Blekum Tug Co.	150.00
	Seattle Office, W. B. Hastings, A. T. M.	300.00
11,	General Expense	
	Western Union Tel. Co.	6.15
	Postal Tel. Cable Co.	80.82
13,	Seattle Office, W. B. Hastings, A. T. M.	20.00
17,	Marine Insurance	
	Western Assurance #2775, \$20,- 000	600.00
	Maritime Ins., #1336, \$17,500 . .	525.00
18, SS.	“Garonne” Repairs & Port Expense, King & Winge on % . .	1,000.00
21, SS.	“Garonne” Repairs and Port Expense, Northwestern Im- provement Co.	425.49

	22, General Expense, Western Union Tel. Co., May.....	123.02
	24, Seattle Office, W. B. Hastings, A. T. M.	20.00
	SS. "Garonne" Voyage 1,.....	
	L. H. Gray & Co., 5% commission on freight	93.22
	27, Seattle Office, W. B. Hastings, A. T. M.....	20.00
	30, Seattle Office, W. B. Hastings, A. T. M.....	75.00
July	2, Seattle Office, W. B. Hastings, A. T. M.....	150.00
	SS. "Garonne" Voyage 1, Payroll crew.....	5,217.10
	5, SS. "Garonne," Voyage 1, Payroll crew.....	21.00
	Payroll crew, overtime.....	43.95
	6, Seattle Office, O. A. Hohansen..	166.85
	7, SS. "Garonne," Voyage 1, J. Knox, Commissioner.....	5.00
	J. Morrison, 2 days' labor.....	4.00
	General Expense, Postal Tel. Cable Co., June.....	18.46
	8, SS. "Garonne," Voyage 1, H. Alexander, 1 day.....	2.25
	9, SS. "Garonne," Repairs & Port Expense, Payroll week ending July 9, 1904.....	514.05

11, Seattle Office, J. M. Shawhan	
Purser	18.75
13, SS. "Garonne," Voyage 1, Bal-	
ance payrolls	10.00
SS. "Garonne," Repairs & port	
expense, payroll, July 12	10.40
Purser, July 10, 13	21.67
	<hr/>
Forward	76,584.03
1904. Brought forward	76,584.03
June 15, SS. "Garonne," Voyage 1	
Phoenix Commercial Stamp	
Works	103.20
Benson, Morris Co.	6.90
Globe Wall Paper Co.	50.75
Quaker Drug Co.	85.33
White Adv. Bureau	82.50
Oxford Tailoring Co.	6.00
W. Bowen & Co.	840.18
Baker & Richards Co.	69.38
Armour & Co.	1,376.20
Graham, Merriam Co.	117.63
SS. "Garonne," Repairs and	
Port Expense, Eilers Piano	
House	275.00
C. M. Shaw & Co.	1,295.78
16, SS. "Garonne," Repairs & Port	
Payroll week ending July 16	321.50

SS. "Garonne," Voyage 1.	
J. B. Agen	786.84
21, General Expense.	
To apply on 2-1/2% disbursing commission on \$32,578.45. . .	217.18
	82,218.40

[Endorsed]: Plffs. Exhibit 19. Eben Smith, United States Master in Chancery, Western District of Washington, Northern Division. Filed in the U. S. Circuit Court, Western Dist. of Washington, Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Complainant's Exhibit No. 20.

(On Letterhead of Canton Insurance Office, Ltd.)
Seattle, Wash., Jan. 3rd, 1905.

Frank Waterhouse & Company, Inc., Burke Block,
City.

Gentlemen:

S. S. GARONNE.

Replying to your inquiry. This vessel was covered by insurance during the period, July 1st to April 8th, as follows:

Issued May 30, 1904	\$37500	one year at	
12% prem.			\$4500.00
Issued June 1, 1904	62500	six months	
7-7/20% prem.			4471.11

Issued Nov. 30, 1904 62500 one year

1-3/4% prem..... 1093.75

This last policy was issued covering harbor risk upon the expiration of the policies written June 1st for \$62500, the vessel being insured during the entire period for \$100000, the rate on \$37500 being 1% per month for six months from May 30th to November 30th; the rate on \$62500 being 7-7/20%, ending November 30th. From November 30th to April 8th the rate was 1-3/4% per annum.

Yours very truly,

J. R. MASON.

[Endorsed]: Pliffs. Exhibit 20. Eben Smith. United States Master in Chancery, Western District of Washington, Northern Division. Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Complainant's Exhibit No. 21.

Memorandum of Agreement made this the 9th day of July, 1904, between Wm. P. King of New York City, party of the first part, and Frank Waterhouse, of Seattle, Washington, party of the second part.

For and in consideration of the mutual covenants and agreements hereinafter expressed, the said parties mutually agree as follows:

First. The said Wm. F. King acting for both parties, will at once organize a corporation under the laws of the State of New York, to be known as the Merchants' and Miners' Steamship Company of New York, with a capital stock of one hundred thousand dollars (\$100,000.00), such corporation to have all the powers usual and common to transportation companies. The Board of Directors shall be composed of five members and the board for the first year shall consist of the following persons: William F. King, Wm. R. Corwine and S. Cristy Mead, of the city of New York, and Frank Waterhouse and W. H. Bogle, of the City of Seattle. For the first year the President shall be Frank Waterhouse, the Vice-president W. H. Bogle and the Secretary S. C. Mead. The said Wm. F. King is to receive fifty thousand dollars par value of the capital stock, and the said Frank Waterhouse is to receive the other fifty thousand dollars par value of the capital stock.

Second. Upon the formation of said corporation, said Waterhouse will have Frank Waterhouse & Co., Inc., execute a bill of sale conveying to said new Company the steamship "Garonne," with her equipment, supplies and material on board, and also turn into the Treasury of said Company, the cash in the hands of Frank Waterhouse & Co., Inc., received from the last voyage of the "Garonne."

Third. The said Wm. F. King will advance to said new company, the sum of thirty thousand dollars (\$30,000.00), in cash, to be applied in the payment and discharge of the claims now existing against the steamship for supplies, material, repairs, etc., said money to be deposited by said King in the Chase National Bank, New York, to the credit of Frank Waterhouse fifteen thousand dollars (15,000.00) thereof, on or before July 16th, 1904, and the remaining fifteen thousand dollars (\$15,000.00) on or before July 23rd, 1904.

Fourth. Said new company shall executed a mortgage securing to said Wm. F. King the said sum of thirty thousand dollars (\$30,000.00), and to said Frank Waterhouse & Co., Inc., the sum of thirty-seven thousand dollars, with interest on said amounts from July 15th, 1904. Said mortgage to contain the usual covenants and agreements contained in such instruments, but to provide specifically against any personal liability or stock liability of either of the parties hereto for any part of the indebtedness expressed in said mortgage. Said indebtedness to be represented by notes given by said mortgagor company to said respective parties as above, and each of the notes to be of equal rank under the mortgage, and to be payable at such time or times as said parties hereto may hereafter agree, and to bear interest at the rate of 6% per annum.

Fifth. Said Waterhouse shall advance to said new Company such amount as may be needed for the operation of the steamer during the present season.

Executed in duplicate above named.

(Signed) WM. F. KING.

(Signed) FRANK WATERHOUSE.

MEMO. OF NOTES.

KING NOTES.

\$10,000 due Nov. 15th, 1904.

10,000 due June 5th, 1905.

10,000 due Nov. 15th, 1905.

\$30,000

WATERHOUSE NOTES.

\$12,000 due Nov. 15th, 1904.

13,000 due June 5th, 1905.

12,000 due Nov. 15th, 1905.

King \$30,000

Waterhouse 37,000

\$67,000

[Endorsed]: Plff. Exhibit 21. Eben Smith. United States Master in Chancery, Western District of Washington, Northern Division. Filed in the U. S. Circuit Court, Western Dist. of Washington, Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Complainant's Exhibit No. 22.

BILL OF SALE OF REGISTERED VESSEL.

To all to Whom These Presents Shall Come, Greeting:

Know ye, that Frank Waterhouse & Co., Inc., of Seattle, Washington, Sole Owner of the screw steamer or vessel called the "Garonne" of Seattle, Washington, of the burden of 2319/100 tons, or thereabout, for and in consideration of the sum of one hundred and sixty-seven thousand (\$167,000) dollars, lawful money of the United States of America, to it in hand paid, before the sealing and delivery of these presents, by Merchants' and Miners' Steamship Company of New York, Incorporated under the Laws of the State of New York, the receipt whereof it does hereby acknowledge and is therewith fully satisfied, contented, and paid, have bargained and sold, and by these presents do bargain and sell, unto the said Merchants' and Miners' Steamship Company of New York, its successors, and assigns, the whole of the said steamer or vessel, together with the whole of the masts, bowsprit sails, boats, anchors, cables, tackle, furniture, and all other necessaries thereunto appertaining and belonging; the certificate of the registry of which said steamer or vessel is as follows, viz.:

Register No. 108.

Official Number Numerals, 86504.

Letters, K. P. T. W.

In pursuance of Chapter One, Title XLVIII "Regulation of Commerce and Navigation," Revised Statutes of the United States, W. P. Prichard, Secy. of Frank Waterhouse Co., Inc., and R. McFarland, master, having taken and subscribed the oath required by law, and having sworn that The Frank Waterhouse and Co., Incorporated, is the only owner of the vessel called the "Garonne" of Seattle, Wash., whereof R. M. McFarland, is at present Master, and is a citizen of the United States, and that the said vessel was built in the year 1871, at Govan, Scotland, as appears by P. R. No. 48B, issued at Seattle, Wash., May 12, 1900. Surrd. O. C., and said register having certified that the said vessel has 4 decks and 3 masts, and that her length is 371 and — tenths feet, her breadth 41 feet and 4 tenths, her depth 20 feet and 4 tenths, her height 15 feet and 8 tenths; that she measures 2319 tons and — hundredths, viz:

	Tons	100ths
Capacity under tonnage deck.....	1938	19
Capacity between decks above tonnage deck	1962	93

Capacity of inclosures on the upper

deck, viz:..... 44 54

Gross Tonnage.....3945 —

Deduction under Section 4153, Revised Statutes,
as amended by Act of March 2, 1895:

Crew space, 233.79; Master's cabin,
steering gear, anchor gear,
boatswain's stores, 71.12;
chart-house; donkey engine
and boiler; storage of sails,
12.03; propelling power, 126.61

Total Deductions....1626.17 1626.17

Net Tonnage..... 2319.

The following described spaces, and no others, have been omitted, viz., and that she is a Str. se. (iron) has a figurehead and a elliptic stern; and the said — having agreed to the description and admeasurement above specified, according to law, said vessel had been duly registered at the port of Port Townsend.

Given under my hand and seal, at the Port of Port Townsend, this 4th day of May, in the Year One Thousand Nine Hundred and one (1901).

No. (Seal)

[Seal] F. D. HEUSTIS, [Seal]

Collector of Customs.

[Seal of the United States Treasury.]

EUGENE TYLER CHAMBERLAIN,

Commissioner of Navigation.

Formerly Br. S/S "Garonne." Remeasured at Seattle, Wash., 1900.

To have and to hold the said whole of the steamer and appurtenances thereunto belonging, unto—the said Merchants' and Miners' Steamship Company of New York, its successors and assigns, to the sole and only proper use, benefit, and behoof or—the said Merchants' and Miners' Steamship Company of New York, its successors and assigns forever: And the said Frank Waterhouse & Company, Inc., has promised, covenanted and agreed, and by these presents does promise, covenant, and agree for its successors and assigns, to and with the said Merchants' and Miners' Steamship Company, of New York, its successors, to warrant and defend the said title of the said vessel and all the other beforementioned appurtenances against all and every person and persons whomsoever.

In testimony whereof, the said Frank Waterhouse and Company, Incorporated, has caused these presents to be signed by Frank Waterhouse, its Present and its incorporated seal to be hereunto affixed, August 4, in the year of our Lord One Thousand Nine Hundred and four (1904).

Signed, sealed and delivered in the presence of
FRANK WATERHOUSE & COMPANY,
Incorporated. [Corporate Seal]
By (Signed) FRANK WATERHOUSE,
President.

[Seal] Attest: (Signed) W. H. BOGLE.
Secy.

(Signed)
W. D. BENSON.
L. E. BURT.

State of Washington,
County of King,—ss.

I, James P. Townsend, a notary public, in and for the State of Washington, residing at Seattle, in the above-named county and State, duly commissioned, sworn and qualified, do hereby certify that on this 4th day of August, A. D. 1904, before me personally appeared, Frank Waterhouse and W. H. Bogle, to me known to be the individuals, who as President and Secretary, respectively, of The Frank Waterhouse & Company, the corporation that exe-

cutted the within instrument and acknowledged the said instrument to be the free and voluntary act and deed of the said corporation for the uses and purposes therein mentioned and on oath stated that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

Given under my hand and official seal, this 4th day of August, 1904.

[Notarial Seal]

(Signed) JAMES P. TOWNSEND,

Notary Public in and for the State of Washington,
Residing at Seattle, County, said State.

Collector's Office, Port of New York.

I hereby certify the within to be a true copy of the original received by this office for record, 1 h 25 m P. M., and recorded in Book R. 149, page 16, September 22, 1904.

Given under my hand and the seal of the Collector, this 23d day of December, 1905.

J. J. C. BARRETT. [Seal]

G. W. H. P. Y.

Deputy Collector.

Fee 50¢ McH.

[Endorsed]: Plff. Exhibit 22. Eben Smith, United States Master in Chancery, Western District of Washington, Northern Division. Filed in the U. S. Circuit Court, Western Dist. of Wash-

ington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Complainant's Exhibit No. 23.

THE UNITED STATES OF AMERICA.

Sections 4170, 4171, 4192, 4193, 4194, and 4196, Revised Statutes.

Ct. No. 517.

BILL OF SALE OF REGISTERED VESSEL.

To all to Whom These Presents Shall Come, Greeting:

Know ye, that The Merchants' and Miners' Steamship Company of New York, sole owner of the steamship or vessel, called the "Garonne" of the burden of 3945 gross tons or thereabouts, for and in consideration of the sum of ninety thousand lawful money of the United States of America, to them in hand paid, before the sealing and delivery of these presents, by White Star Steamship Company of Seattle, Washington, U. S. A., the receipt whereof we do hereby acknowledge and are herewith fully satisfied, contented, and paid, have bargained and sold, and by these presents do bargain and sell, unto the said White Star Steamship Company of Seattle, Washington, its successors, executors, administrators, and assigns, the whole of the said steamship or vessel, together with the masts, bowsprit, sails, boats, anchors, cables, tackle, fur-

niture, and all other necessaries thereunto appertaining and belonging the certificate of registry of which said ship or vessel is as follows, to wit:

Temporary

Registry No. 54

Official Number.

Numerals. Letters.

86504 KPTW.

CERTIFICATE OF REGISTRY.

In pursuance of Chapter I, Title XLVIII, "Regulation of Commerce and Navigation," Revised Statutes of the United States, Frank Waterhouse, of Seattle, Washington, President, having taken and subscribed the oaths required by law, and having sworn that the Merchants' and Miners' Steamship Company, of New York, a corporation organized under the laws of the State of New York is the only owner of the vessel called the "Garonne" of New York whereof John Jordeson is at present master, and is a citizen of the United States, and that the said vessel was built in the year 1871, at Govan, Scotland, as appears by P. R. #108, issued at Port Townsend, Wash., May 4, 1901; surrendered, O. & Dist. C.; and said Register having certified that the said vessel has Four decks and Three masts; and that her length is 371 and 0 tenths; her breadth 41 feet and 4 tenths; her depth 20 feet and 4 tenths; her height — feet and — tenths; that she measures Twenty-three hundred and nineteen tons, viz.:

	Tons.	100ths.
Capacity under tonnage deck.....	1938	19
Capacity between decks above tonnage deck	1962	93
Capacity of inclosures on the upper deck, viz:	44	54
<hr/>		
Gross Tonnage.....	3945	
Deductions under Section 4153, Revised Statutes, as amended by Act of March 2, 1895:		
Crew space, 233.79; Master's cabin..	233	79
Steering gear: Anchor gear 46.62....	46	62
Boatswain's stores, 71.12, Chart house, Storage of sails, 12.03....	83	15
Donkey engine and boiler, Propelling power 1262.61.....	1262.61	
<hr/>		
Total deduction.....	1626.17	
<hr/>		
Net Tonnage.....	2319	
<hr/>		

The following described spaces, and no others, have been omitted, viz: and that she is a Screw Str. (Iron), has a figurehead and an elliptic stern; and the said—having agreed to the description and ad-measurement above specified, according to law, said vessel has been duly registered at the Port of Port Townsend, Wash.

Given under my hand and seal at the Port of Port Townsend, this 6th day of August, in the year one thousand nine hundred and four.

No. (Seal) CHAS. MILLER,
Dep. Collector of Customs (Seal)
Naval Officer.

EUGENE TYLER CHAMBERLAIN,
Commissioner of Navigation.

[Seal of Department of Commerce and Labor.]

To have and to hold the said Steamship "Garonne," her furniture, equipments and appurtenances thereunto belonging unto them the said White Star Steamship Company of Seattle, Washington, its successors, executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of them the said White Star Steamship Company, its successors, administrators, and assigns forever: And we the said The Merchants' and Miners' Steamship Company, of New York, for ourselves, our successors have and by these presents do promise, covenant, and agree, for ourselves, our heirs, executors, and administrators, to and with the said White Star Steamship Company, its successors, heirs, executors, administrators, and assigns to warrant and defend the said title to the said Steamship "Garonne," her furnishings, equipment, and all the other before-mentioned appurtenances against all and every person and persons whomsoever.

In testimony whereof, we the said The Merchants' and Miners' Steamship Company, of New York, have hereunto set our hands and seals this 27th day of April, in the year of our Lord one thousand nine hundred and five.

Signed, sealed, and delivered in presence of—

[Seal Merchants' and Miners' Steamship Company.]

MERCHANTS' AND MINERS' STEAMSHIP COMPANY, OF NEW YORK.

By FRANK WATERHOUSE,

President.

By W. H. BOGLE,

Secretary.

State of Washington,
District of Puget Sound,
County of King,—ss.

On this 28th day of April, A. D. one thousand nine hundred and five, before me, Frank P. Dow a Notary Public in and for the said King County, duly commissioned and sworn, personally appeared the within named Frank Waterhouse and W. H. Bogle, personally known to me to be respectively President and Secretary of Merchants' and Miners' Steamship Company, of New York, a corporation, whose names are subscribed to the annexed instrument as party thereto, personally known to me to be the individual described in, and who executed the said annexed

instrument for and on behalf of said corporation and who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned for and on behalf of said company and as its act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Seal] FRANK P. DOW,
Notary Public in and for the State of Washington,
Residing at Seattle.

I certify this to be a correct copy of the Original Bill of Sale on record in this office.

Custom-house, Port Townsend, W., De. 29th, 1905.

[Seal] HENRY BLACKWOOD,
Deputy Collector, Dr.

[Endorsed]: Copy Cat. No. 517. Department of Commerce and Labor, Bureau of Navigation. Bill of Sale of Registered Vessel. Merchants' and Miners' Steamship Company to White Star Steamship Company. Steamship called the "Garonne."

Custom-House, Port Townsend, Wash.,
May 3d, 1905.

Received for Record 3 h. 0 m. P. M. Recorded,
book 13, page 65.

J. PAYNE,
Acting Clerk.

[Endorsed]: Pliffs. Exhibit 23. Eben Smith, United States Master in Chancery, Western District of Washington, Northern Division. Filed in the U. S. Circuit Court, Western Dist. of Washington, June 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Complainant's Exhibit No. 24.

(On Letterhead of Frank Waterhouse & Co., Inc.)

Seattle, Wash., Aug. 19, 1904.

Mr. F. S. Pusey, #1 Broadway, New York, N. Y.

Dear Sir: The enclosed letter of August 2nd, with stated enclosures, was mailed to you on August 3rd to #101 Broadway, as you will note by the enclosed envelope, which was returned to us, by the N. Y. P. O. not being able to make delivery. Mr. Chapin has now given us your address as #1 Broadway, and we hope that this will reach you.

Yours truly,

J. P. TOWNSEND,

Treas.

R. Enc.

Filed in the U. S. Circuit Court, Western District of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Complainant's Exhibit No. 25—In Rebuttal.

CERTIFICATE OF INCORPORATION

of the

**MERCHANTS' & MINERS' STEAMSHIP COM-
PANY OF NEW YORK.**

We, the undersigned, all being persons of full age, and at least two-thirds of us being citizens of the United States, and one of us a resident of the State of New York, for the purpose of becoming a Navigation Corporation for the business hereinafter specified, pursuant to the provisions of Article 2 of the Transportations Corporations Law of the State of New York, do hereby certify as follows, to wit:

I. The name of the corporation is to be:

“**MERCHANTS' & MINERS' STEAMSHIP COM-
PANY OF NEW YORK.**”

II. The objects for which the corporation is to be formed are the following, namely:

For the purpose of building, for its own use, equipping, furnishing, fitting, purchasing, chartering, navigating or owning steam, sail or other boats, ships, vessels or other property to be used in any lawful business, trade, commerce or navigation, and to establish, maintain and operate a line of steam, sail or other boats, ships or vessels, and for the carriage, transportation or storing of lading, freight, mails, merchandise and all other property of what-

soever description, or passengers; to own, buy, sell, or lease docks, piers, yards, warehouses and other facilities for carrying on its said business and to do any and all things which may be necessary, desirable or convenient in connection with its said business, subject, however, to the restrictions of the laws of the State of New York and of the United States of America.

III. The waters to be navigated are: The bay harbor of New York, the ports, bays, inlets, sounds and waters along the Atlantic Coast of Canada, the United States of America, and South America, along the Pacific Coasts of South America, Mexico, the United States of America, including Alaska, and Canada, and especially between the port of New York and the port of Seattle, and the principal ports intervening on the usual routes of navigation, and also between the port of Seattle and the port of Nome and the principal ports intervening on the usual routes of navigation; also the coasts of Japan, of Russia in Asia, Corea, China, India, the Hawaiian and Philippine Islands, and between the ports of the said coasts and the ports on the Pacific Coasts of the United States of America.

IV. The amount of its capital stock is to be One Hundred Thousand Dollars (100,000.00).

V. The term of its existence is to be fifty (50) years.

VI. The number of shares of which the capital stock shall consist is to be one thousand (1000) of the par value of One Hundred Dollars (\$100.00) each.

VII. The corporation is to have five (5) Directors.

VIII. The names of the Directors for the first year are:

Name	Postoffice Address
------	--------------------

Arthur J. Baldwin,	27 Pine Street, New York City, N. Y.
--------------------	---

Frank M. Van Wagonen,	27 Pine Street, New York City, N. Y.
-----------------------	---

Emory W. Uhman,	27 Pine Street, New York City, N. Y.
-----------------	---

Frank A. Clary,	27 Pine Street, New York City, N. Y.
-----------------	---

C. Strawder Batt,	27 Pine Street, New York City, N. Y.
-------------------	---

IX. The principal office is to be situated in the Town Waverly, Tioga County, New York.

X. The number of shares which each subscriber of this certificate agrees to take in such corporation is as follows:

Arthur J. Baldwin,	94, 27 Pine Street, New York, N. Y.
--------------------	--

Frank M. Van Wagonen,	1, 27 Pine Street, New York, N. Y.
-----------------------	---------------------------------------

Emory W. Ulman, 1, 27 Pine Street, New York, N. Y.

Frank A. Clary, 1, 27 Pine Street, New York, N. Y.

C. Strawder Batt, 1, 27 Pine Street, New York, N. Y.

M. J. Duffy, 1, 27 Pine Street, New York, N. Y.

H. T. Mead, 1, 27 Pine Street, New York, N. Y.

XI. The corporation may purchase, acquire, hold and dispose of the stock, bonds and other evidence of indebtedness of any public or private corporation, domestic or foreign, and issue in exchange therefor its own stock, bonds or other obligations.

In witness whereof, we have made, signed, acknowledged and filed this certificate in duplicate.

Dated July 11th, 1904.

ARTHUR J. BALDWIN.

FRANK M. VAN WAGONEN.

EMORY W. ULMAN.

FRANK A. CLARY.

C. STRAWDER BATT.

M. J. DUFFY.

H. T. MEAD.

State of New York,

County of New York,—ss.

On this 11th day of July, 1904, before me personally came M. J. Duffy, H. T. Mead, C. Strawder Batt,

Frank A. Clary, Emory W. Ulman, Frank M. Van Wagonen and Arthur J. Baldwin, to me severally known to be the persons described in and who made and signed the foregoing certificate, and severally duly acknowledged to me that they had made, signed and executed the same for the uses and purposes therein set forth.

EDWARD T. MAGOFFIN,
Notary Public,
New York Co.

State of New York,
County of New York,—ss.

Arthur J. Baldwin, Frank M. Van Wagonen and Emory W. Ulman, being severally duly sworn, depose and say, and each for himself deposes and says: That he is one of the directors named in the foregoing certificate; that at least ten per cent of the amount of capital stock named therein has been, in good faith, subscribed and at least ten per cent of such subscriptions have been paid in cash.

ARTHUR J. BALDWIN.
FRANK M. VAN WAGONEN.
EMORY W. ULMAN.

Severally sworn before me this 11th day of July,
1904.

[Seal] EDWARD T. MAGOFFIN,
Notary Public.
New York Co.

[Endorsed]: Certificate of Incorporation of the Merchants' & Miners' Steamship Company of New York. Tax for Privilege of Organization of this Corporation \$50. Under Chapter 448, Laws of 1901. Paid to State Treasurer Before Filing. State of New York. Office of the Secretary of State. Filed and Recorded Jul. 12, 1904. J. B. H. Mongin, Deputy Secretary of State.

State of New York,
Office of the Secretary of State,—ss.

I have compared the preceding with the original Certificate of Incorporation of "Merchants' & Miners' Steamship Company of New York," filed and recorded in this office on the 12th day of July, 1904, and do hereby certify the same to be a correct transcript therefrom and the whole of said original.

Witness my hand and the seal of office of the Secretary of State, at the City of Albany, this twenty-ninth day of December, one thousand nine hundred and five.

[Seal]

HORACE G. TENNANT,
Second Deputy Secretary of State.

[Endorsed]: Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Complainant's Exhibit No. 26—In Rebuttal.

UNITED STATES OF AMERICA,
STATE OF NEW YORK.

By

JOHN F. O'BRIEN.

Secretary of State and Custodian of the Great Seal
Thereof.

It is hereby certified, that Frank D. Cole, was on the day of the date of the annexed Certification and Attestation, Deputy Secretary of State of the State of New York, and duly authorized by the laws of said State to make such Attestation and Certificate and to perform the duties belonging to the Secretary of State in making such Attestation and Certificate, in like manner as said Secretary of State; that the said Certificate and Attestation are in due form and executed by the proper officer; that the Seal affixed to said Certificate and Attestation is the Seal of office of the Secretary of State of the State of New York; that the Signature thereto of the said Deputy Secretary of State, is in his own proper handwriting, and is genuine; and that full faith and credit, may and ought to be given to his official acts; and, further, that the Secretary of State is the Custodian of the original certificate under Section 5 of the Business Corporations Law so certified and at-

tested and Custodian of the Great Seal of said State, hereto affixed.

In testimony whereof, the Great Seal of the State [Seal] is hereunto affixed.

Witness my hand at the city of Albany, the eleventh day of May in the year of our Lord one thousand nine hundred and six.

JOHN F. O'BRIEN.

Secretary of State.

MERCHANTS' & MINERS' STEAMSHIP COMPANY OF NEW YORK.

CERTIFICATE OF PAYMENT OF ENTIRE CAPITAL STOCK.

We the undersigned, being a majority of the directors of the Merchants' & Miners' Steamship Company of New York, a corporation formed under the provisions of the Transportation Corporations Law of the State of New York, do hereby certify that the amount of the capital stock of said corporation is One Hundred Thousand Dollars (\$100,000), and that it has been entirely paid in in cash and property.

In witness whereof we have made, signed and acknowledged this certificate in duplicate, this 29th day of September, 1904.

FRANK A. CLARY,
C. STRAWDER BATT,
ARTHUR J. BALDWIN,

A Majority of the Board of Directors.

State of New York,

County of New York,—ss.

On this 29th day of Sep., 1904, before me personally came Frank A. Clary, C. Strawder Batt and Arthur J. Baldwin, to me personally known, and known to me to be the persons described in and who executed the foregoing certificate and severally acknowledged to me that they executed the same.

EDWARD F. MAGOFFIN,

Notary Public.

New York Co.

State of New York,

County of New York,—ss.

Frank A. Clary and C. Strawder Batt being severally duly sworn each for himself deposes and says that the said Frank A. Clary is the president and

the said C. Strawder Batt is the secretary of the Merchants' and Miners' Steamship Company of New York, and that the statements contained in the foregoing certificate are true and that the same is subscribed by a majority of the Board of Directors.

FRANK A. CLARY.

C. STRAWDER BATT.

ARTHUR J. BALDWIN.

Sworn to before me this 29th day of Sept., 1904.

EDWARD F. MAGOFFIN,

Notary Public,

New York Co.

[Endorsed]: Merchants' & Miners' Steamship Company of New York. Certificate of Payment of Entire Capital Stock. State of New York. Office of Secretary of State. Filed and Recorded Oct. 4, 1904. J. B. H. Mongin, Deputy Secretary of State.

State of New York,

Office of the Secretary of State,—ss.

I have compared the preceding with the certificate under Section 5 of the Business Corporations Law of Merchants' & Miners' Steamship Company of New York, filed and recorded in this office on the 4th day of October, 1904, and do hereby certify the same to be a correct transcript therefrom and the whole thereof.

Witness my hand and the seal of office of the Secretary of State, at the City of Albany, this eleventh day of May, one thousand nine hundred and six.

[Seal]

FRANK O. COLE,
Secretary of State.

[Endorsed]: Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "A."

(On Blank of Postal Telegraph-Cable Company.)

Seattle, February 3, 1904.

W. H. Ferguson, Fifth Avenue Hotel, New York,
N. Y.

Your thousand received and accepted and I now confirm sale of "Garonne," provided you pay me fourteen thousand dollars, February fifteenth, deferred payments to be made as follows: Ten thousand dollars March fifteenth, ten thousand June fifteenth, five thousand September fifteenth, five thousand November fifteenth, all this year; five thousand February fifteenth, five thousand April fifteenth, five thousand June fifteenth, five thousand August fifteenth, five thousand October fifteenth, ten thousand December fifteenth, all nineteen five; five thousand March fifteenth nineteen six, deferred payments to be secured by first mortgage on steamer,

assignment marine insurance, corporation bond guaranteeing vessel against indebtedness, and other security which shall be satisfactory to me. Sale conditioned on terms and representations my letter to you January twenty-sixth. Confirm this understanding.

FRANK WATERHOUSE.

FW.

[Endorsed]: Exhibit "A." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "B."

January 26, 1904. B

Captain W. H. Ferguson, Assistant Manager De Soto Placer Mining Co.

Dear Sir: Your Mr. W. B. Hastings has lately had some conversation with me, regarding the purchase of our steamer "Garonne," and in connection therewith, he has asked me to write to you, briefly stating the terms at which I am willing to dispose of this vessel, the condition in which she now is, and the work that would have to be done to her, in order to put her into commission.

I will sell "Garonne" for \$85,000, to be paid \$25,000 in cash, on the date of transfer, and the balance divided into six ninety day payments, bearing in-

terest at the rate of seven per cent per annum, and the deferred payments to be satisfactorily secured by mortgage on the steamer, an assignment of the marine insurance policies on the steamer, in an amount sufficient to cover the deferred payments, with the guarantee of a surety company that no debts shall be incurred by the steamer, which would become a lien against her, and take precedence of my mortgage, and by such other collateral as would be acceptable and satisfactory to me.

Or I will sell the "Garonne" for \$75,000 spot cash.

Yesterday I handed Mr. Hastings the particulars of this vessel, which I believe he intends to forward to you, and from which you will be able to judge of her, in a general way. The steamer is now lying out of commission at Quartermaster Harbor, near Tacoma. It will require the expenditure of about \$7500 to put her in commission again; this amount to be spent in connecting up her machinery, drydocking and painting her, and refurnishing some of her passenger accommodations. Although "Garonne" is an old ship, she has been pronounced by the United States Inspectors here and by Lloyds Inspectors, both here and in British Columbia, and also by Lloyds Inspectors in San Francisco, to be the staunchest vessel on the Pacific Ocean to-day. She is built of iron, and is an exceptionally heavy ship, and in spite of her age, no apparent

deterioration of any kind in any spot, has taken place in her hull, or in the thickness of her plating. She was examined thoroughly by the Superintendent Engineer of the Pacific Coast Steamship Company a few months ago, who reported to his Company that her hull alone was cheap at \$100,000. Her engines are compound; they are in good condition, and have been well taken care of during the period she has been laid up out of commission. \$44,000 was spent in her boilers two years ago; her furnaces are entirely new; boiler tubes are new; combustion chambers are new; and the boilers are in first-class condition in every respect, as far as I know. Of course, "Garonne" is not as economical a boat to operate, as she would be if her engines were triple expansion, instead of compound, and if she had a more modern plant in her, but for the price at which I offer her, and for the Northern Alaska trade, she cannot be beaten in any market in the world. I bought this boat in London, five years ago, from the Orient Steam Navigation Company, at a cost of £18,000. Her condition now is a great deal better than it was then, on account of the large amount of money we have spent on her boilers, which was the weak spot in her, since we bought her. Moreover, we have secured American register for her, since we have owned her. She is a vessel that

you can run in her present condition to advantage, in the Northern Alaska trade, for several years to come, and at the end of that time, her hull will still be in good enough condition, to give her new machinery and new boilers, if you so desire. A few months ago I was offered \$40,000 for the iron in the hull of this steamer alone, by a junk dealer in Shanghai. I think the steamer is fully equipped with glassware, cutlery, crockery, all kinds of linen, blankets, and all necessary passenger equipment and life saving appliances, for her full complement of passengers. This equipment has been carefully stored away and protected while the steamer has been out of commission, and it all goes with the steamer. It would probably take you two or three weeks to do the necessary work on her, to pass her inspection and to put her in commission.

“Garonne” has always been a very popular boat in the Alaska trade, and we have never failed to secure for her a full share of all the business that has been moving. If you are in the market for a steamer for the Northern Alaska trade, I am very sure that you cannot secure such a bargain as this anywhere else. We have made a great deal of money with this steamer since we bought her, and I can say that she has never made an unprofitable voyage to Alaska, since we began operating her. My reasons for offering her for sale, are on account of a desire

to drop out of the Alaska passenger trade, and on account of our inability to engage in it to advantage, in connection with other business interests that we have, and also for other reasons which I have explained personally to Mr. Hastings.

Several other parties are now figuring with me, on the purchase of this steamer, for use in the Northern Alaska trade, and I think there is little doubt that she will be disposed of at an early date; I therefore suggest that if she strikes you favorably, you should consider the matter of her purchase at once.

Yours truly,

[Endorsed]: Exhibit "B." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "C."

(On Blank of Postal Telegraph-Cable Company.)
94 Vr. N. R. 47 Duplicate, (Corrected Copy)

New York, N. Y., June 1th, 1904.

Frank Waterhouse, Burke Building, Seattle, Wn.

Extending time of Steamship payments requested by Leake in todays telegram will be personally appreciated by me and will aid us greatly in avoiding censure here for embarrassing position caused by

demands for excessive supplies this concession by you is sure to work to your credit later.

W. H. ROWE.

3:30P

[Endorsed]: Exhibit "C." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "D."

(On Blank of Postal Telegraph-Cable Company.)

Seattle, June 15, 1904.

W. H. Rowe, Care Occidental Securities Co., 42 Broadway, New York City.

When your telegram arrived yesterday was out of town. Message repeated over telephone and misunderstood. Certainly agree let conditions my telegram thirteenth stand until arrival Mead early next week. Strongly advise you remit money promptly pay debts now due protect your own credit, save me embarrassment. If you will remit six thousand expenses by tomorrow will stand off balance bills until next week.

FRANK WATERHOUSE.

Rush.

[Endorsed]: Exhibit "D." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "E."

(On Letterhead North-Alaska Steamship Company.)

New York, June 8th, 190—.

Mr. Frank Waterhouse, Seattle, Wash.

Dear Sir: Without any more information than that given in the dispatches by Mr. Smith in regard to the settlement, in the absence of Mr. Rowe, the writer deems it advisable to ask you in regard to the discount (\$3500) which was understood was to be allowed in the cash settlement. Inferring from the telegram that there was no discount allowed, it is reasonably supposed if the payment is made according to the settlement, it is practically cash, and would justify the Company to expect the discount according to the understanding. If the discount be not allowed, it seems fair that we should have the right to have the payment extended according to the original proposition rather than paying the whole sum as arranged in the settlement. Please write us fully in regard to this.

We would like to hear from you in regard to the business prospects as often as you can conveniently

write us. Of course we lack the desired information regarding the first sailing, until we have the reports which you probably have sent us by this time.

Very truly yours,

J. B. LEAKE,

P. S.—Does the Steamship carry mail. Have you any suggestion regarding that subject.

[Endorsed]: Exhibit "E." Filed in the U. S. Circuit Court, Western District of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "F."

(On Letterhead of McKee & Frost, Counsellors at Law.)

June 10, 1904.

Frank Waterhouse, Esq., Seattle, Washington.

Dear Sir: The Secretary of the North-Alaska Steamship Company, Mr. John B. Leake, has just called upon us to examine the bill of sale and mortgage at the Chase National Bank in the matter of the transfer of the Steamship "Garonne."

Before the Board of Directors authorize their secretary and treasurer to sign the proposed mortgage, they wish to have before them all the particulars of the recent transactions in Seattle, which led up to the execution of that instrument, and a full state-

ment of the Steamship accounts to and including the first sailing.

They expect this report and statement at any moment, and upon receipt of same will be in a position to hold a meeting on short notice and proceed intelligently to act in your matter.

As you are doubtless aware, new interests have been added to the Company, and require a little time to become familiar with its affairs.

Trusting that remaining details may be satisfactorily adjusted in a little while, we remain,

Yours truly,

McKEE & FROST.

[Endorsed]: Exhibit "F." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "G."

(On Blank of Postal Telegraph-Cable Company.)

237. SF. GC. S. 48.

New York, June 15th, 1904.

Frank Waterhouse, Seattle, Wn.

Have consulted with those who have thus far financed our enterprise. They insist that no more money shall be paid until Mr. Mead has personal interview with you and goes over condition at Seattle.

I trust you will await Mr. Meads arrival he left to-day for Seattle direct.

W. H. ROWE.

7:25 P. M.

[Endorsed]: Exhibit "G." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "H."

Copy.

The Western Union Tel. Co.

New York, June 15, 1904.

Washington National Bank, Seattle, Wn.

Respecting payments made to Waterhouse on boat we are requested by parties of responsibility and reputed wealth recently associated with Occidental Securities Co. to advise that pending payments will be made on satisfactory report by representative now en route. Notify Waterhouse Abase.

CHASE NATIONAL BANK.

[Endorsed]: Exhibit "H." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "I."

(On Blank of Western Union Telegraph Company.)

9. CH. KD. A. 56 Paid.

NC, New York, June 14th, 1904.

Frank Waterhouse and Co., Burke Bldg., Seattle,
Washn.

Letter and telegrams submitted to financial interests which have thus far financed the securities Co., they have auditor now going over books and accounts will you kindly let conditions of your telegram of the thirteenth stand till the arrival of Mr. Mead our representative who leaves for Seattle Wednesday. Will stop at Rainier Grand Hotel.

2:57PM.

W. H. ROWE.

[Endorsed]: Exhibit "I." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "J."

(On Blank of Postal Telegraph Commercial Cables.)

163 Vr. Af.R.S

New York, N. Y., June 13th, 1904.

Frank Waterhouse, Seattle, Wn.

Thanks for concession does thirteen thousand cover insurance.

J. B. LEAKE.

5P

[Endorsed]: Exhibit "J." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "K."

(On Blank of Postal Telegraph-Cable Company.)

129. Sf. Rb. G. 47

New York, June 11, 1904.

Frank Waterhouse, Burke Building, Seattle, Wash.

Extending to me of steamship payments requested by Leake in today's telegram will be personally appreciated by me and will aid us greatly in avoiding censure here for embarrassing position caused by demands for excessive supplies this concession by you is sure to work to your credit later.

W. H. ROWE.

[Endorsed]: Exhibit "K." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "L."

(On Blank of Postal Telegraph-Cable Company.)
138. Sf. Wf. G. 84.

New York, June 11, 1904.

Frank Waterhouse, Seattle, Wash., Burke Building.

Letter June third received today expenses "Garonne" hard rap following low receipts and expected discount disallowed management prejudiced by underestimate cash required if we pay thirteen thousand expenses immediately cannot notes and mortgage be made eighteen thousand six hundred July twelfth eighteen thousand six hundred August fifteenth then within estimate to personal relief of management your co-operation solicited instructed Hastings confer with you all matters steamship operation and expense fill no requisitions material or supplies unless absolutely necessary when will we receive complete statement.

J. B. LEAKE.

1:33 p. m.

[Endorsed]: Exhibit "L." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun.

16, 1906. A. Reeves Ayres, Clerk. A. N. Moore,
Dep.

Defendants' Exhibit "M."

(On Blank of Postal Telegraph Commercial Cables.)

§5 Vt. N. R. 10

New York, N. Y., June 10, 1904.

Frank Waterhouse, Seattle, Wn.

Attend matter quick letters advise you Smith
comes daily expected.

J. B. LEAKE.

3:20P

[Endorsed]: Exhibit "M." Filed in the U. S.
Circuit Court, Western Dist. of Washington. Jun.
16, 1906. A. Reeves Ayres, Clerk. A. N. Moore,
Dep.

Defendants' Exhibit "N."

(On Blank of Postal Telegraph-Cable Company.)

Seattle, June 14, 1904.

W. H. Rowe, 42 Broadway, New York City.

Will not let conditions remain as at present. In-
sist debts against "Garonne" now due be paid im-
mediately and mortgage be executed immediately.
Will expect prompt reply stating definitely what you
intend to do.

FRANK WATERHOUSE.

[Endorsed]: Exhibit "N." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "O."

(On Blank of Postal Telegraph Commercial Cables.)

179 SF GC. W. 10

New York, May 18.

Frank Waterhouse, Seattle.

Arrangement payment to-morrow. Smith disabled mothers sickness and death today.

J. B. LEAKE.

550pm.

[Endorsed]: Exhibit "O." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "P."

(On Letterhead of The CHASE National Bank.)

New York, June 9th, 1904.

Frank Waterhouse, Esq., 205 Burke Building, Seattle, Wash.

Dear Sir: Your letter of the 3rd inst. has been received enclosing a bill of sale of the Steamer "Garonne," together with a mortgage on that vessel.

We have notified Mr. J. B. Leake that we have received the papers, and he stated that he would call upon us in connection with the transaction probably tomorrow or the next day. When the mortgage has been executed by him we will advise you further.

Yours very truly,

M.L.Z.

C. C. SLADE,
Assistant Cashier.

[Endorsed]: Exhibit "P." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "Q."

(On Blank of Postal Telegraph-Cable Company.)

Seattle, June 11, 1904.

John B. Leake, Care Occidental Securities Company,
42 Broadway, New York.

Underwriters demand immediate payment Garonne insurance, amounting to sixty-six hundred. They decline to issue covering notes and threaten cancel insurance unless premiums paid immediately. Smith Ferguson assured me money this purpose would be remitted from New York immediately after ship sailed. Must be telegraphed without fail reach me Monday. Answer.

FRANK WATERHOUSE.

[Endorsed]: Exhibit "Q." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "R."

June 14, 1904.

J. B. Leake, Sec'y & Treas. North Alaska Steamship Company, Rooms 1416-20, 42 Broadway, New York City.

Dear Sir: Replying to your letter of the 8th inst., I beg to say that the discount on the purchase price of the "Garonne," \$3,500.00, was offered to you on condition that \$81,500.00 cash was paid to me on or before May 15th last. You failed to pay this cash, and therefore my offer of discount will lapse. I cannot at all coincide in your opinion that the payments as now agreed to are practically cash payments. I have been very much embarrassed on account of the sale of this steamer, and inasmuch as I was able to sell the steamer to other parties on the same day I sold it to you, for the same amount of money, from whom I firmly believe I would have received the payment in full, before this time, I think under the circumstances I have treated you very leniently. I quite understand the difficulties you have had to face, and I am anxious to accommodate myself to your needs in every way I can do so.

In view of the telegrams that passed between us yesterday, I expect you will promptly remit enough money to pay for the insurance, the balance of the bills that are due, and that you will pay me on account of the note due June 22nd, \$8600.00, and the balance of payments as indicated in my telegram of yesterday, \$10,000, with interest on the first note on July 12th, and the second note in full, on August 15th.

I am unable to send you a statement covering earnings and disbursements of the "Garonne" to date, until we can secure from Mr. Hastings a statement covering receipts and disbursements of your own office. We have been promised this statement for the last week, and yesterday I was again promised it by Mr. Hastings not later than tomorrow. If we get it tomorrow, we can make up our complete statement, and forward it to you on Thursday.

Regarding future business, I have to say that if you can make your next round voyage without suffering any loss, you will do very well. Both cargo and passengers are always scarce for the second voyage in each season, and those who operate their boats on this voyage without loss are, in my opinion, very fortunate. I think we can accomplish this by cutting down the expenses of the steamer very considerably. If I have the authority from you to do so, I shall insist that both the deck crew and at least 50%

of the steward's crew are cut out as soon as the steamer returns to port, and that not a single man in any department remains by the steamer while she is in port, except those who are actually required to prepare her for her next voyage. You will of course realize that these matters of expense require most careful consideration and the closest attention, which, if they do not receive, much unnecessary expense and loss of profit will result. I have never made a losing trip with "Garonne" to Northern Alaska, but she has been operated very conservatively and with great regard to her earnings and expenses. I think the most sensible way would have been for you to have placed, or even to now place, the operation of the steamer in my hands, for the present at least. When Capt. Ferguson left here, it stood that all questions of operation would be in charge of Mr. Hastings, and that we should only have charge of traffic matters. I have had so much more experience, however, with this particular steamer than anyone else has had, that I ought to be able to handle her to better advantage than almost anyone else can. At any rate, I am very willing to operate her for you to the very best of my ability, without making and extra charge therefor, if you desire me so to do. On the third voyage, the steamer ought to make some money, and on the fourth voyage, she ought to do very well indeed. You will of course bear in mind

that the expense of subsequent voyages will not be nearly as heavy as the expense of the first voyage. Do not expect, however, to get any profit from the second voyage.

All of the Alaska steamers, including the "Garonne," carry mail, for which they are paid at the rate of 1, $\frac{1}{2}$ cents per pound. None of the steamers have a regular mail contract, nor is it proposed by the P. O. Department, to change the present method by making any such contract.

Please bear in mind that a pay-roll of between \$5,000 and \$6,000 will be due on this steamer, on the day she reaches Seattle from Cape Nome. Capt. Ferguson and Mr. Smith both assured me that this amount of money would be sent down on the steamer, in charge of the purser, to pay these wages. If they keep their word in this respect, all will be well; but I think that it is wise to anticipate the possibility of their not doing this.

My services are at your command, and you may rest assured that I will protect your interests in every way I can, to the extent of the authority I have.

Yours truly,

[Endorsed]: Exhibit "R." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "S."

Seattle, June 13, 1904. B.

(On Blank of Postal Telegraph-Cable Company.)
John B. Leake, Occidental Securities Co., 42 Broadway, New York City.

Thirteen thousand does not include insurance. Hastings promises furnish his statement, which is necessary complete mine, by Wednesday; will then forward mine promptly.

Garonne FRANK WATERHOUSE,

[Endorsed]: Exhibit "S." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "T."

(On Blank Postal Telegraph-Cable Company.)

Seattle, June 13, 1904.

J. B. Leake, Care Occidental Securities Co., 42 Broadway, New York City.

If you remit thirteen thousand to-morrow for expenses, execute mortgage at Chase National immediately and pay me eight thousand, six hundred June twenty-second, I will extend balance of payments as follows; Ten thousand with interest on first note until July twelfth; entire amount of second note until August fifteenth. Answer.

FRANK WATERHOUSE.

[Endorsed]: Exhibit "T." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "U."

(On Blank of Postal Telegraph-Cable Company.)

Seattle, June 10, 1904.

J. B. Leake, 42 Broadway, New York City.

Have you executed mortgage and remitted money pay expense bills here? These matters pressing; require immediate attention.

Answer.

Special Rush.

FRANK WATERHOUSE.

[Endorsed]: Exhibit "U." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "V."

June 3, 1904.

Chase National Bank, New York City.

Gentlemen: I enclose herewith, bill of sale of the steamer "Garonne" from Frank Waterhouse & Co., Inc., to the North Alaska Steamship Co.; also, mortgage on same steamer, from the North Alaska Steamship Company to Frank Waterhouse & Co.

You will note that this mortgage has already been signed by Chas. B. Smith, President of the North

Alaska Steamship Co., but it still requires the signature of the Secretary of that Company, Mr. J. B. Leake, #42 Broadway. I have written Mr. Leake to-day, informing him that the deed and mortgage have been sent to you, and have asked him to step over to your Bank and execute the mortgage and receive the deed from you in return for so doing. Will you kindly, therefore, deliver the deed to Mr. Leake, after he has executed the mortgage as Secretary of the North Alaska Steamship Company; also kindly see that his signature is properly witnessed and acknowledged before a Notary Public. After the mortgage is completed, please return it to me here. Also please return to me the bill of sale of this same vessel, which was left with you by Mr. R. McGinnis some weeks ago, and greatly oblige,

Yours truly,

Enc.

[Endorsed]: Exhibit "V." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "W."

June 3, 1904.

Mr. J. B. Leake, c/o Occidental Securities Co., 42 Broadway, New York City.

My dear Mr. Leake:

For your information, I enclose herewith, copy

of a letter I have written to the Chase National Bank, to-day. The deed and mortgage mentioned therein, should arrive at the Chase National Bank, by the time you receive this letter. Will you please therefore, go over to that bank promptly, and execute the mortgage, as Secretary of the North Alaska Steamship Company, accepting the deed from the Chase National Bank, in return therefor? Mr. Smith assured me that I could depend upon your prompt action in this respect.

You are, of course, aware that the deed to the steamer must be recorded in the Custom House here. I suggest that you either promptly return the deed to a bank in Seattle, to be recorded for you, or send it back to me for that purpose. If you choose to do the latter, I will have it recorded in the Custom House at Port Townsend, immediately after its receipt by me, and after it is recorded, will return it quickly to you. I imagine it will not be necessary to keep the deed here, for the purpose of recording it, for more than three or four days.

Enc.

Very truly yours,

[Endorsed]: Exhibit "W." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "X."

June 3, 1904.

Occidental Securities Company, 42 Broadway, New
York City.

Dear Sirs: Mr. Smith has doubtless advised you, as he promised me yesterday he would do, that on account of the condition of the expenditures and receipts for and from "Garonne," I was compelled at the last moment to agree to an arrangement which was exceedingly unsatisfactory to me. Instead of receiving the balance of the purchase price of this steamer, in cash or proper securities, for the amount still due, according to the terms of her sale, I was practically forced to accept the company's notes at 20 and 40 days, secured by first mortgage on the steamer, and \$18,600 of the receipts of freight and passengers, in settlement. I should not have objected to this settlement if it had not been for the fact that the bills contracted by your people on the credit of the "Garonne," were largely in excess of what I imagined they would be, and had been given to understand by your people, they would be. These bills exceeded the largest amount that Capt. Ferguson had named to me, by about \$13,000. Until yesterday afternoon, when most of the bills were received, I was under the impression that we had received sufficient money from you on account of ex-

penses, to pay all the bills, not including the \$5,000 I received from you on account of purchase, on June 1st. This \$5,000 I was compelled to relinquish and credit to expense account, and after doing so, there still remained a balance of about \$13,000 of expenses which I regret to have to ask you to meet very promptly. As near as I can judge the matter, the increased expenses were incurred in largely overstocking the steamer with provisions and supplies. These provisions and supplies were purchased by us on the order of Capt. Ferguson, and we were without authority to limit him in the premises. He expected to carry out 600 passengers, and provisions were purchased for that number, with an extra full supply for 600 passengers and 100 crew for 30 days, in case of accident. Of course, these supplies are on board the steamer and covered by insurance, and will be on hand for another voyage; but it unfortunately means that they will have to be paid for now, instead of when they will be actually required.

However, it is no use to criticise anyone now. The bills have been incurred, and they have got to be met promptly. The steamer herself is in A-1 condition and is a valuable piece of property, with a big earning power, good for many years to come. In this opinion, Mr. Pusey, who left for New York to-day, via Denver, shares. He considers that in the "Garonne" you have a very valuable asset.

A supply bill came in this afternoon, amounting to \$1300, of which I had no knowledge before the steamer sailed yesterday, which raised the amount of the indebtedness for which we are short of funds, to a little over \$13,000. You will understand, of course, that these bills must be promptly met. I, therefore, ask you to remit me the money by telegraph, upon receipt of this letter, which I calculate will be on the 9th or 10th inst.

During Capt. Ferguson's absence at least, and for your own future protection, I think it would be well for you to direct me to fill no requisitions for material or supplies for the "Garonne," unless I am satisfied that the same are absolutely necessary, and for you to instruct Mr. Hastings of Capt. Ferguson's office, that he must confer with me regarding all matters connected with the operation of this steamer and the expenses incident thereto. I am afraid that unless you do this, you will be apt to have further disappointments in the matter of expenditures. You may rest assured that I want to protect you in every way I can, but in order to do so, I should be placed in a position of absolute authority here, as far as you are concerned.

Please regard the latter portion of this letter as confidential, as I should be very unwilling to have your representatives here think that I was trying to "knock" them.

I sincerely hope that you will not embarrass me by failing to promptly remit, on receipt of this letter, enough money to pay all the bills.

Yours faithfully.

[Endorsed]: Exhibit "X." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "Y."

(On Blank of Postal Telegraph-Cable Company.)

Seattle, Wash., May 31, 1904.

Occidental Securities Company, 42 Broadway, New York.

W. will accept five thousand cash from New York at once and twenty-two thousand five hundred out of receipts, balance to be paid in thirty days, secured by mortgage, and note. Remit five thousand immediately. Very imperative and must close at once.

CHARLES B. SMITH

Special Rush.

[Endorsed]: Exhibit "Y." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "Z."

(On Blank of Postal Telegraph-Cable Company.)

Seattle, May 27, 1904.

Occidental Securities Company, 42 Broadway, New
York.

Received five thousand yesterday account ex-
penses. Will you remit ten thousand additional to-
day, supplies. Requisitions must be filled imme-
diately insure vessel sailing second.

FRANK WATERHOUSE.

[Endorsed]: Exhibit "Z." Filed in the U. S. Cir-
cuit Court, Western Dist. of Washington. Jun. 16,
1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "A-1."

(On Blank of Postal Telegraph-Cable Company.)

Seattle, May 26, 1904.

Occidental Securities Company, 42 Broadway, New
York.

Your telegram yesterday unsatisfactory. Neither
cargo, coal nor supplies will go aboard steamer until
I receive money pay therefor. Have instructed at-
torneys delay further action until receipt your reply
this message, which shall expect promptly.

FRANK WATERHOUSE.

[Endorsed]: Exhibit "A-1." Filed in the U. S.
Circuit Court, Western Dist. of Washington. Jun.

16, 1906. A. Reeves Ayres, Clerk. A. N. Moore,
Dep.

Defendants' Exhibit "B-1."

(On Blank of Postal Telegraph-Cable Company.)

Seattle, May 20, 1904.

Charles B. Smith and Occidental Securities Com-
pany, 42 Broadway, New York City.

Unless I receive at least five thousand here before
noon to-morrow to partially protect me against bills
due and expenses being incurred on Garonne my ac-
count, shall turn matter over to my attorneys to take
necessary steps to cancel sale. Am so situated that
I have no alternative in matter. Earnestly hope you
will protect yourselves by forwarding money in time.

FRANK WATERHOUSE.

[Endorsed]: Exhibit "B-1." Filed in the U. S.
Circuit Court, Western Dist. of Washington. Jun.
16, 1906. A. Reeves Ayres, Clerk. A. N. Moore,
Dep.

Defendants' Exhibit "C-1."

(On Blank of Postal Telegraph-Cable Company.)

Seattle, May 23, 1904.

C. B. Smith or Occidental Securities Co., 42 Broad-
way, New York.

Received twenty-five hundred from you Saturday.
Same day advanced two thousand for you. Steamer

must coal next Wednesday, expense five thousand. Insurance must be placed this week, expense six thousand year's premium. Food supplies must be put aboard this week, expense six thousand. You now owe me money advanced five thousand. If balance purchase price paid immediately cash or satisfactory securities, you will be at liberty to contract all bills you desire Garonne's credit, and pay same out of freight and passenger receipts available June second. If purchase not completed immediately must have cash before can permit coal supplies and insurance to purchased steamer's credit. Please advise quickly what course you will pursue.

FRANK WATERHOUSE.

[Endorsed]: Exhibit "C-1." Filed in the U. S. Circuit Court, Western District of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "D-1."

(On Blank of Postal Telegraph-Cable Company.)

May 23, 1904.

Chase National Bank, New York City.

Please telegraph financial standing General Grenville M. Dodge, New York City; would you consider notes for sixty thousand dollars endorsed by him safe collateral.

Garonne

FRANK WATERHOUSE.

[Endorsed]: Exhibit "D-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "E-1."

(On Letterhead North-Alaska Steamship Company.)

New York, May 17, 1904.

Mr. Frank Waterhouse, Seattle, Wash.

Dear Sir: On May 13th, 1904, we sent you the following telegram, which we now confirm: "To insure your protection executed contract today General Grenville M. Dodge. Nature contract itself protects you. Consult Dunn and Bradstreet for Dodge rating Mailing particulars. Have paid five thousand more than terms of sale. Hoped to assist you and save discount. Still expect to do so if necessary satisfactory securities for deferred payments. Some money tomorrow."

The contract with Gen. Dodge is of such a nature that to protect himself he will in our opinion necessarily protect you. Other arrangements are made by which we will be able to pay you all or nearly all due.

If these are carried out we think you have no cause for anxiety as to our ability to meet or exceed your requirements as to deferred payments, and satisfactory securities.

In short, the interests of Gen. Dodge and the Steamship Company are mutual by this agreement, and whatever operates to hinder or delay the success of this Company will imperil the substantial interest that Gen. Dodge has acquired in our enterprise.

This letter is sent you by our Mr. Leake during the enforced absence of our President, who has been kept from transacting business by the illness of his mother.

Yours very truly,

N. A. S. S. CO.

J. B. LEAKE, Secy.

[Endorsed]: Exhibit "E-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "F-1."

(On Letterhead Chase National Bank.

New York, May 24, 1904.

Mr. Frank Waterhouse, Seattle, Wash.

Dear Sir: We have received your telegraphic inquiry of the 23d instant, and in response to your request for a reply by wire we have sent you the following message which is hereby confirmed:

Your telegram even date received. Party inquired about in excellent standing here. Reported man considerable means.

General Dodge is a gentleman well advanced in years, and was formerly a banker and railroad official at Council Bluffs, Iowa, where we understood he still retains his home, but spends most of his time in New York. He was a member of Congress in 1869; was appointed by the President as a commissioner to inquire into the management of the war with Spain, and stands very high in military and government official circles. At the present time he is Chairman of the Board of Directors of the Colorado Southern Railway, and is a Director in the Fort Worth & Denver Railway, the Colorado Midland, and the Wichita Valley Railroad.

His local interests are the Bowling Green Trust Co. and the India Wharf Brewing Co. As intimated in our telegram, he is supposed to be possessed of considerable wealth and he is a gentleman of the highest character and business integrity.

Yours very truly,

E. J. STALKER,

Cashier.

[Endorsed]: Exhibit "F-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "G-1."

NORTH ALASKA STEAMSHIP COMPANY.

S. S. "Garonne."

Frank Waterhouse, Esq.

Dear Sir: Failing to see you at the dock I take this means to let you know that I have placed in the Purser's hands \$800 which I took from the Traffic Mgrs. office. This was to enable the ship to meet labor charges before the collection of freight at Nome, and I propose to send you \$200 at the same time as the \$5000 is sent on the Dodge matter to cover the amounts used out of receipts heretofore.

Yours truly,

CHAS. B. SMITH.

[Endorsed]: Exhibit "G-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "H-1."

(On Blank of Postal Telegraph Commercial Cables.)
121 SF. BR. W. 12

New York, N. Y. May 26

Frank Waterhouse, Seattle.

All arrangements completed today wire five thousand ten tomorrow or Saturday sure.

J. B. LEAKE.

114p/m.

[Endorsed]: Exhibit "H-1." Filed in the U. S. Circuit Court, Western Dist. of Washington, Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "I-1."

(On Blank of Postal Telegraph-Cable Company.)

Seattle, May 26, 1904.

Occidental Securities Co., 42 Broadway, New York.

Your telegram yesterday unsatisfactory. Neither cargo, coal nor supplies will go aboard steamer until I receive money pay therefor. Have instructed attorneys delay further action until receipt of your reply to this message, which shall expect promptly.

FRANK WATERHOUSE.

[Endorsed]: Exhibit "I-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "J-1."

(On Blank of Postal Telegraph Commercial Cables.)

191.VR.WA.S. 8.

New York, May 25th, 1904.

W. G. Bogle, Seattle, Wn.

Wired Waterhouse in full regarding telegrams of today.

CHARLES B. SMITH.

5:51 P. M.

[Endorsed]: Exhibit "J-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "K-1."

(On Blank of Postal Telegraph-Cable Company.)
186. VR. WA. S. 37.

New York, May 25th, 1904.

Frank Waterhouse, Seattle, Wn.

Distressing delay unavoidable in absence member syndicate payment sure. Our interests mutual. Do not jeopardize expect money pay coal tomorrow supplies this week insurance will be paid. Smith leaves tomorrow morning Seattle to complete contract see Boyle.

J. B. LEAKE.

5:40 P. M.

[Endorsed]: Exhibit "K-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "L-1."

(On Blank of Western Union Telegraph Company.)

123Ch.KD.U.

17 Collect

New York, May 24, 1904.

Frank Waterhouse, Seattle, Wn.

Your telegram of even date received Party inquired about in excellent standing here Reported man considerable means.

CHASE NATL. BANK.

1151 a. m.

[Endorsed]: Exhibit "L-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "M-1."

(On Blank of Postal Telegraph Commercial Cables.)

112 Vr Af Ne

New York, N. Y. May 23rd, 1904.

Frank Waterhouse, Seattle Wn.

Appreciate urgency making all effort Close arrangement pay you.

C. B. SMITH.

330pm.

[Endorsed]: Exhibit "M-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun.

16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "N-1."

	Interest.
Purchase price S. S. Garonne.....	85000
Remittance Feby. 3, 1000; Feby. 15, 14000	15000
	70000
Interest Feby 15 to Mch. 15 on 70000 at 7%	408.33
Remittance March 15.....	7000
	63000
Interest Mch. 15 to Mch. 18 on 63000 at 7%	36.75
Remittance March 18.....	3000
	60000
Interest Mch. 18 to Apl. 24 on 60000 at 7%	420.
Paid F. Waterhouse in New York apl. 24	5000
	55000
Interest April 24 to June 2 on 55000 at 7%	406.38
	1271.46

[Endorsed]: Exhibit "N-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "O-1."

(On Blank of Postal Telegraph-Cable Company.)

May 25, 1904. B.

Charles B. Smith, Occidental Securities Co., 42
Broadway, New York City.

Please accept notice Garonne will not be coaled, or supplies allowed aboard, or cargo now on wharf loaded, until receive money pay for same, or until you execute satisfactory securities covering all deferred payments and deposit same for me in Chase National Bank, or pay balance purchase price cash. Steamer should be loading now, due to coal tomorrow. Understand her cargo space all engaged, considerable number passengers booked. This is my final determination. Unless hear satisfactorily from you today, will turn matter over to my attorney for cancellation contract tonight.

(Garonne)

FRANK WATERHOUSE.

[Endorsed]: Exhibit "O-1. Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "P-1."

(On Blank of Postal Telegraph Commercial Cables.)

142 Vr. N. R. 12,

New York, N. Y., May 19th, 1904.

Mr. Frank Waterhouse, Seattle, Wn.

Cannot force collection promised today urging to reciprocate your favors pay sure.

J. B. LEAKE.

5:05P

[Endorsed]: Exhibit "P-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "Q-1."

(On Blank of Postal Telegraph Cable Company.)

May 17, 1904B?

C. B. Smith, Occidental Securities Co., New York City.

Received no money. Additional bills for work supplies ordered by Ferguson on Garonne's credit and account coming in. My patience being rapidly exhausted. You must remit ample funds immediately, or shall take necessary steps protect myself. Please consider this an ultimatum.

FRANK WATERHOUSE.

(Garonne)

[Endorsed]: Exhibit "Q-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "R-1."

(On Blank of Postal Telegraph Commercial Cables.)
129 Vr. N. R. 13

New York, N. Y., May 16th, 1904.

Frank Waterhouse, Seattle, Wn.

Expect Ferguson pay today can't tell explain
Dodge by wire Trust best efforts.

C. B. SMITH.

4:15

[Endorsed]: Exhibit "R-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "S-1."

(On Blank of Postal Telegraph Cables.)

"93 Vr N Ne 20 3 ex

New York, May 14, 04.

Frank Waterhouse, Seattle.

Your wire disturbed assurance of money today re-

quiring effort to restore please favor us by continuing work.

O. C. S. CO.,
J. B. LEAKE.

132pm.

[Endorsed]: Exhibit "S-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "T-1."

(On Blank of Postal Telegraph-Cable Company.)
"221 SF. K. W. 56

New York, N. Y., May 13th.

Frank Waterhouse, Seattle.

To insure your protection executed contract today general greenville M. Dodge nature contract itself protects you consult Dunn and Bradstreet for Dodge rating mailing particulars have paid five thousand more than terms of sale hoped to assist you and save discount still expect to do so if necessary satisfactory securities for deferred payments some money tomorrow.

C. B. SMITH.

610pm

[Endorsed]: Exhibit "T-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun.

16, 1906. A. Reeves Ayres, Clerk. A. N. Moore,
Dep.

Defendants' Exhibit "U-1."

(On Blank of Postal Telegraph-Cable Company.)

Seattle, May 14, 1904.

Charles B. Smith, Occidental Securities Company, 42
Broadway, New York.

Your last telegram unsatisfactory. Do not understand nature contract Dodge, which protects me. I require five thousand cash Monday, for payment bills already incurred and satisfactory security for deferred purchase price payments. If you remit this Monday and five thousand additional on account purchase, to reach me not later than next Wednesday, also five thousand to reach me May twenty-fifth, I will extend date for delivery of securities or for making payment in full cash, until June fifth. Am willing accommodate you every way possible but there are limitations to my ability.

FRANK WATERHOUSE.

Rush.

[Endorsed]: Exhibit "U-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "V-1."

(On Blank of Postal Telegraph-Cable Company.)
Seattle, May 13, 1904.

Charles B. Smith, Occidental Securities Company,
42 Broadway, New York.

No reply to my telegram of yesterday. Please take notice unless I receive three thousand today and two thousand additional next Monday, all work on Garonne will be discontinued tomorrow night; also unless I receive fifteen thousand next Monday, account of purchase price or the satisfactory securities covering deferred payments, sale will be declared cancelled and money already paid, forfeited.

FRANK WATERHOUSE.

Special Rush.

[Endorsed]: Exhibit "V-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "W-1."

(On Blank of Postal Telegraph-Cable Company.)
Charles B. Smith, Occidental Securities Company, 42
Broadway, New York.

Have received formal notice from Waterhouse today that unless he receives three thousand on account of expenses incurred today and two thousand addi-

tional on Monday for expenses incurred which will have to be paid that day, all work will be discontinued on steamer tomorrow evening. He also insists that he shall receive at least fifteen thousand by the fifteenth, on account of purchase price, or sale will be canceled and money already paid forfeited. Waterhouse evidently anxious accommodate us all he can, but unable to continue advancing money or extend payment of purchase unless above amount immediately forthcoming? Am satisfied he will adopt measured stated and the situation very serious one, requiring immediate attention. Strongly advise you attend to this immediately and communicate promptly with Waterhouse.

W. H. FERGUSON.

Special Rush.

[Endorsed]: Exhibit "W-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "X-1."

(On Blank of Postal Telegraph-Cable Company.)

Seattle, May 12, 1904.

Occidental Sureties Company, 42 Broadway, New York.

Yesterday's telegram unsatisfactory. Am anxious accommodate you, but large amount of work in progress on Garonne which I cannot and will not permit to continue on my account, unless I immediately receive funds to pay for same. Sincerely hope you will not compel me to have work stopped.

FRANK WATERHOUSE.

Rush.

[Endorsed]: Exhibit "X-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "Y-1."

(On Blank of Postal Telegraph Commercial Cables.)
94 Vr. N.M.10.

New York, May 11, 1904.

Frank Waterhouse, Seattle.

Fully expect meet your wishes but can't demand conclusion today.

J. B. LEAKE.

5:44 p. m.

[Endorsed]: Exhibit "Y-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "Z-1."

(On Blank of Postal Telegraph-Cable Company.)

May 11, 1904. B

Charles B. Smith, Occidental Securities Company,
42 Broadway, New York City.

Special Rush.

Cannot permit work Garonne proceed unless receive immediately necessary funds. Bills amounting approximately five thousand including drydock expenses, are here for payment and must be promptly met. Steamer is here, in splendid condition; will be entirely completed, ready for sea by June first, if necessary expense funds promptly received from you. Can I also absolutely depend on your taking up balance purchase price by May fifteenth, as promised; if not, what amount money can I depend on receiving account purchase price by that date? Please state exactly what I may expect, without any chance failure. To meet certain obligations of my own, need fifteen thousand dollars on thirteenth; can you arrange let me have this amount positively on that date? Please wire definite, positive reply to these questions, today.

FRANK WATERHOUSE.

Special Rush

Garonne.

[Endorsed]: Exhibit "Z-1." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "A-2."

Seattle, May 6, 1904.

Frank Waterhouse, Auditorium Annex, Chicago, Illinois.

Smith wires; Am arranging to carry out all promises to you including passed payments. Beg your co-operation by allowing Garonne dry docked today. Will positively meet the expense. (End quote" Please answer quickly so that we can advise Esquimalt and inspectors. Crew now on board Garonne.

FRANK WATERHOUSE & CO.

[Endorsed]: Exhibit "A-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "B-2."

(On Blank of Postal Telegraph-Cable Company.)

Seattle, May 6, 1904.

Charles B. Smith, North Alaska Steamship Company, 42 Broadway, New York City.

Your wire to Waterhouse Auditorium Seattle repeated to him Auditorium Chicago.

FRANK WATERHOUSE & CO.

[Endorsed]: Exhibit "B-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "C-2."

(On Blank of Postal Telegraph Commercial Cables.)
"41 SF. WF. W. 26.

New York, N. Y., May 6

Frank Waterhouse, Auditorium, Seattle.

Am arranging to carry out all promises to you including passed payment beg your co-operation by allowing Garonne dry docked today will positively meet the expense.

10am.

C. B. SMITH.

[Endorsed]: Exhibit "C-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "D-2."

(On Blank of Postal Telegraph Commercial Cables.)

236. SF. MI. S. 13 Collect.

Chicago, May 4th, 1904.

Frank Waterhouse and Co., Seattle, Wn.

Keep promptly posted regarding movements of Garonne report remittances received New York.

FRANK WATERHOUSE.

7:44 P. M.

[Endorsed]: Exhibit "D-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "E-2."

(On Blank of Western Union Telegraph Company.)

Seattle, May 4, 1904.

Frank Waterhouse, Auditorium Annex, Chicago.
Illinois.

Ferguson wiring New York be sure have thirty-five hundred here tomorrow. Will not move Garonne until received.

FRANK WATERHOUSE & CO.

[Endorsed]: Exhibit "E-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun.

16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "F-2."

(On Blank of Western Union Telegraph Company.)

"NX" Chicago May '04.

Frank Waterhouse & Co., Seattle, Wn.

Will Tremont have complete cargo Dont permit Garonne proceed Esquimalt until you receive Minimum thirty-five hundred additional expenses.

FRANK WATERHOUSE.

Garonne.

[Endorsed]: Exhibit "F-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "G-2."

(On Blank of Postal Telegraph Commercial Cables.)

New York Apl. 28 '04.

Frank Waterhouse & Co., Seattle, Wn.

Is draft paid wire Boody House Toledo where will Rosene Dock.

FRANK WATERHOUSE.

[Endorsed]: Exhibit "G-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun.

16, 1906. A. Reeves Ayres, Clerk. A. N. Moore,
Dep.

Defendants' Exhibit "H-2."

(On Blank of Postal Telegraph Commercial Cables.)

New York Apl. 27 '04.

Frank Waterhouse & Co., Seattle, Wn.

Leave Thursday evening for Toledo address
Boody House draft be paid tomorrow.

FRANK WATERHOUSE.

[Endorsed]: Exhibit "H-2." Filed in the U. S.
Circuit Court, Western Dist. of Washington. Jun.
16, 1906. A. Reeves Ayres, Clerk. A. N. Moore,
Dep.

Defendants' Exhibit "I-2."

(On Blank of Postal Telegraph-Cable Company.)

Seattle, April 26, 1904.

Frank Waterhouse, Hotel Spaulding, New York
City.

New York bank advises smith draft protested to-
day but that Smith promises payment tomorrow.

FRANK WATERHOUSE & CO.

[Endorsed]: Exhibit "I-2." Filed in the U. S.
Circuit Court, Western Dist. of Washington. Jun.
16, 1906. A. Reeves Ayres, Clerk. A. N. Moore,
Dep.

Defendants' Exhibit "J-2."

(On Letterhead of The Chase National Bank.)

April 28th, 1904.

Frank Waterhouse, Esq., President Frank Waterhouse & Co., Incorporated, Seattle, Wash.

Dear Sir: We beg to advise that Mr. McGinnis of Speyer & Co. has today handed to us a bill of sale of registered vessel, Frank Waterhouse, Incorporated, to North Alaska Steamship Co., Steamship called the Garonne, which bill we hold subject to your instructions.

Yours very truly,

S. H. MILLER,
Assistant Cashier.

[Endorsed]: Exhibit "J-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "K-2."

April 8, 1904.

Mr. Charles B. Smith, c/o Rowe Alaska Mining Company, Room 409, #20 Broad St., New York City.

Dear Sir: In accordance with your telegraphic authority of April 7th, we have this day made ten days

sight draft on you for \$5,000.00 account "Garonne" repairs, which we trust to your kind protection.

Yours truly,

Treas.

[Endorsed]: Exhibit "K-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "L-2."

THE NATIONAL CITY BANK.

New York, April 6, 1904.

E. Foster Kelley, Esq., Cashier, Seattle National Bank, Seattle, Wash.

Dear Sir: We have sent you night message in response to your telegram of this morning, as follows: "Company in question in state formation. Present financial responsibility very small. Letter follows," which we now beg to confirm, and to state that the information we receive is to the effect that while the Company in question is incorporated for \$3,000,000, the shares of par value \$10., we find from an interview with Mr. L. that they have only sold a very small portion of their stock; that a payment has been made on a boat of \$25,000, partially made up by sale of stock, and the rest by contributions of several of the organizers. It is not through that any of these

people are very strong financially, and it would be as well to have transactions for the present well secured.

Trusting the above will be of service to you,

we, Yours very truly,

(Sgnd) A. G. LOOMIS,

Vice-President.

[Endorsed]: Exhibit "L-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "M-2."

(On Blank of Postal Telegraph Commercial Cables.)

New York, N. Y. April 7th, 1904.

Frank Waterhouse, Seattle, Wn.

I pay your draft five thousand dollars ten days sight.

C. B. SMITH.

[Endorsed]: Exhibit "M-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "N-2."

(On Blank of the Postal Telegraph-Cable Company.)

Seattle, April 6, 1904.

Charles B. Smith, Room 409; 20 Broad Street, New
York City.

Received telegram yesterday from Occidental Securities Company authorizing draft on them for five thousand dollars. Presume this your account. Not knowing Securities Company, will not draw unless am guaranteed draft will be paid. Please arrange with New York Bank to telegraph correspondent here to honor my draft on Securities Company or on you for five thousand at ten days sight. Cannot continue work on steamer unless placed in funds immediately. Continuance work imperative enable completion work before season opens. Wire prompt rely.

Rush.

FRANK WATERHOUSE.

[Endorsed]: Exhibit "N-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "O-2."

(On Blank of Western Union Telegraph Company.)

Z. New York, April 5, 1904.

Frank Waterhouse, Burke Bldg., Seattle, Wn.

Will pay you draft five thousand ten days sight.

OCCIDENTAL SECURITIES CO.,

J. B. LEAKE,

Treas.

[Endorsed]: Exhibit "O-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "P-2."

(On Blank of Postal Telegraph-Cable Company.)

Seattle, April 5, 1904.

Charles B. Smith, North Alaska Steamship Company, Room 409, #20 Broad Street, New York City.

Wire Waterhouse direct to draw five thousand ten days sight to cover expenditures Garonne. Rush answer.

W. H. FERGUSON.

Rush—Charge Garonne.

[Endorsed]: Exhibit "P-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun.

16, 1906. A. Reeves Ayres, Clerk. A. N. Moore,
Dep.

Defendants' Exhibit "Q-2."

(On Blank of Postal Telegraph Commercial Cable.)
Frank Waterhouse, Burke Bldg., Seattle.

Expenses on boat will be met undetermined
whether to go to Seattle or wait for you here will
wire definitely Monday.

CHAS. B. SMITH.

[Endorsed]: Exhibit "Q-2." Filed in the U. S.
Circuit Court, Western Dist. of Washington. Jun.
16, 1906. A. Reeves Ayres, Clerk. A. N. Moore,
Dep.

Defendants' Exhibit "R-2."

(On Blank of Postal Telegraph-Cable Company.)

Seattle, Wash., March 31, 1904.

Charles B. Smith, Care Rowe Alaska Mining Co.,
20 Broad St., New York City.

Please telegraph reply to my message March
twenty ninth. Shall be compelled to discontinue
work now proceeding on steamer unless you arrange
immediately to pay for same.

FRANK WATERHOUSE.

[Endorsed]: Exhibit "R-2." Filed in the U. S.
Circuit Court, Western Dist. of Washington. Jun.

16, 1906. A. Reeves Ayres, Clerk. A. N. Moore,
Dep.

Defendants' Exhibit "S-2."

(On Blank of Postal Telegraph-Cable Company.)

Seattle, March 29, 1904.

Charles B. Smith, Care Rowe Alaska Mining Co.,
20 Broad Street, New York City.

Had arranged start east next Saturday. Expected
be New York April seventh. Cannot matter be
fully closed on my arrival there. If not please wire
positive date you will be here. Please remit by tele-
graph thirty-five hundred dollars to pay for work
already done on steamer by Fergusons orders and for
insurance premium advanced by me.

FRANK WATERHOUSE.

[Endorsed]: Exhibit "S-2." Filed in the U. S.
Circuit Court, Western Dist. of Washington. Jun.
16, 1906. A. Reeves Ayres, Clerk. A. N. Moore,
Dep.

Defendants' Exhibit "T-2."

(On Blank of Postal Telegraph Commercial Cables.)

New York N. Y. March 29th, 1904.

Frank Waterhouse, Burke Building, Seattle, Wn.

Delay caused having nothing here showing equity

in ship will be in Seattle next week arrange fully with you.

CHARLES B. SMITH.

[Endorsed]: Exhibit "T-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "U-2."

(On Blank of Postal Telegraph-Cable Company.)

Seattle, March 28th, 1904.

Charles B. Smith, Care Rowe Alaska Mining Co.,
20 Broad Street, New York City.

I have advanced thirty-five hundred dollars to pay insurance premiums for work on Garonne on your account since you purchased her, on Ferguson's promise that you would remit enough money to reimburse me and take care of future necessary expenses. Please wire definitely when I shall receive the money already advanced and be placed in funds to continue the work; also wire if you will be prepared to complete purchase of steamer May fifteenth as agreed.

Special rush message.

FRANK WATERHOUSE.

[Endorsed]: Exhibit "U-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun.

16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "V-2."

Seattle, Wash. March 15, 1904.B

Received from the Washington National Bank of Seattle, Cashier's Check Puget Sound National Bank of Seattle, payable to John J. Habecker, and endorsed "Pay to order of Frank Waterhouse No. 107996, for Three Hundred dollars."

[Endorsed]: Exhibit "V-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "W-2."

(On Blank of Postal Telegraph-Cable Company.)

February 16, 1904.B

W. H. Ferguson, Fifth Avenue Hotel, New York City.

I received and receipted to Hastings for fourteen thousand dollars account purchase Garonne yesterday.

[Endorsed]: Exhibit "W-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "X-2."

(On Blank of Postal Telegraph Commercial Cables.)

New York, Feb. 16, 1904.

Frank Waterhouse, Bierk Bldg., Seattle.

Will leave for Seattle Wednesday Hastings has instructions regards sale or charter will arrange details on my arrival.

U. H. FERGUSON.

[Endorsed]: Exhibit "X-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "Y-2."

(On Blank of Postal Telegraph Commercial Cables.)

New York, Feb. 15th, 1904.

Frank Waterhouse, Burke Bldg., Seattle, Wn.

Fourteen thousand dollars deposited Chase National. Wire to Washington National Seattle to pay you on account of purchase Garonne please wire acceptance.

W. H. FERGUSON.

[Endorsed]: Exhibit "Y-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "Z-2."

(On Blank of Postal Telegraph-Cable Company.)
Seattle, Feb. 12, 1904. B.

W. H. Ferguson, Fifth Avenue Hotel, New York
City.

Has Washington National Bank Seattle been instructed honor my draft fourteen thousand dollars next Monday?

FRANK WATERHOUSE.

Pink.

[Endorsed]: Exhibit "Z-2." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "A-3."

February 10, 1904.

W. H. Ferguson, Fifth Avenue Hotel, New York,
N. Y.

Received your letter fifth. A vital condition of sale Garonne to you was that purchase should be entirely completed by February fifteenth by exchange of steamer for fifteen thousand cash, notes, mortgage bond and other satisfactory collateral. Am willing accept fourteen thousand next Monday, provided you agree execute notes, mortgage bond and

deliver securities by March first, or forfeit the fifteen thousand if you fail; but I want you to advise by wire what character of collateral to deferred payments you will furnish in addition to mortgage and bond, so I may pass upon same by Monday. I guarantee Garonne good insurable risk, and will pass United States inspection for commission, by expenditure on your part of about seventy-five hundred dollars. Am now doing considerable work on her my own expense, preparatory to inspection. Other parties anxious to purchase her next Monday at same price for practically cash.

FRANK WATERHOUSE.

Rush.

[Endorsed]: Exhibit "A-3." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "B-3."

Received, Seattle, February 15, 1904, of C. B. Smith, Fourteen Thousand Dollars, being payment due this pay on contract for purchase of Steamship "Garonne." Another payment of \$10,00.00 and the execution of notes, mortgage, bond and collaterals for deferred payments are to be made and completed on or before March 15, 1904, as per terms of contract; and if default is made by said Smith

in making said further payment or in execution of said securities on or before March 15th next, then his right to purchase said vessel shall cease, and all moneys paid by him toward such purchase shall be forfeited to and be and remain the moneys of this Company.

FRANK WATERHOUSE & CO., Inc.,
By FRANK WATERHOUSE,
President.

[Endorsed]: Exhibit "B-3." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "C-3."

(On Blank of Western Union Telegraph Company.)

2, New York, Feb. 15, '04.

F. Waterhouse, Burke Bldg., Seattle, Wn.

Fourteen thousand wired by Chase National to Washington National Seattle to Pay you account Garonne please wire acceptance will pay you insurance and expenses on arrival Seattle next Monday.

W. H. FERGUSON.

[Endorsed]: Exhibit "C-3." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "D-3."

(On Blank of Western Union Telegraph Company.)

Q. New York, Feb. 15, 1904.

Frank Waterhouse, Burke Bldg., Seattle, Wn.

C. B. Smith, has deposited fourteen thousand dollars same transferred by wire through Washington National Bank, Seattle.

[Endorsed]: Exhibit "D-3." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "E-3."

(On Blank of Western-Union Telegraph Company.)

New York, February 11:04.

Frank Waterhouse, Burke Bldg., Seattle, Washn.

Understand Garonne transfer on payment twenty-five thousand my principal understands same and has gone south cannot reach Seattle until March tenth or twelfth. We propose pay fourteen thousand Feby. fifteenth, ten thousand March fifteenth made then Notes for balance mortgage insurance policy good security bonds or cash I may not reach Seattle until March fifth Will pay shipkeeper until transfer.

W. H. FERGUSON,

[Endorsed]: Exhibit "E-3." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "F-3."

New York, Feb. 5th, 1904.

Mr. Frank Waterhouse, Burke Building, Seattle, Wash.

Dear Sir: Your various communications, including confirmation of the sale of the Steamer Garonne duly received and we have confirmed a compliance with the terms by telegraph.

We have written our Mr. Hastings to make a thorough inspection of the Steamer and wire us the results of the said inspection.

I expect to be in Seattle myself in time to go over the ship and follow the lines of inspection, but it is just possible that I may not arrive there in time, and may be detained here a week or 10 days longer than I anticipate.

In regard to the second payment on the Garonne, we will follow this mode which we trust will be satisfactory. On or before Feb. 15th, we will deposit in the Chase National Bank of New York, \$14,000, and the bank will wire the Washington National Bank of Seattle to pay your draft for this 14,000 on account of the purchase price, of the steamer "Garonne." We will also notify you at the same

time that we have paid money in your credit and a receipt given by you to our Mr. Hastings will cover the ground.

As soon as I arrive in Seattle we will finish up the matter as the details as per arrangement so as to make the transfer of the vessel on the next payment of 10,000. We would like to have the option until June 1st of paying the full amount of \$75,000 in cash for the said steamer. This I feel sure you will allow us as it is practically a cash transaction by that time.

Yours very truly,

W. H. FERGUSON.

[Endorsed]: Exhibit "F-3." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "G-3."

(On Blank of Western-Union Telegraph Company.)

"MS." New York, Feb. 4 '04.

Frank Waterhouse, Burke Bldg., Seattle, Wn.

Confirmation sale GARONNE received conditions will be complied with.

U. H. FERGUSON.

[Endorsed]: Exhibit "G-3." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun.

16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "H-3."

(On Blank of Postal Telegraph-Cable Company.)

New York, Feb. 3, 1904.

Frank Waterhouse, Burke Building, Seattle.

Proposition Garrone accepted Chase National bank has wired Washington National bank, Seattle, to pay you one thousand dollars close deal will reach Seattle, Feby. 12th.

U. H. FERGUSON.

[Endorsed]: Exhibit "H-3." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "I-3."

(On Blank of Postal Telegraph-Cable Company.)

Philadelphia, Pa., Feb. 2nd, '1904.

Frank Waterhouse, Burke Building, Seattle, Wn.

Terms Garrona received commission satisfactory New York to-night Fifth Ave. Hotel require twenty-four hours.

W. H. FERGUSON.

[Endorsed]: Exhibit "I-3." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "J-3."

AT A SPECIAL MEETING OF THE
BOARD OF DIRECTORS

OF

THE NORTH ALASKA STEAMSHIP COM-
PANY.

Held at 42 Broadway, New York, July 9, 1904, the
following Resolution was adopted,

Moved by Mr. Forff, Secinded by Mr. Segee,

Whereas, this company is indebted to Frank Waterhouse & Company of Seattle, Washington, in the sum of approximately Seventy Thousand Dollars, and

Whereas, the said Frank Waterhouse & Company has received large sums of money, from this Company, and

Whereas, it seems wise to this Board of Directors, and beneficial to the company's interests that the mutual claim between this company and Frank Waterhouse & Company be compromised and settled by the exchange of releases.

Be it Resolved, that the attorneys of the company be and they hereby are authorized to prepare, and have executed by the offices of this company, proper documents to carry out the same, and to receive from the said Frank Waterhouse & Company, documents properly executed to carry out said plan, and the Secretary of this Company is authorized to affix the company's seal to documents executed in accordance herewith."

[Endorsed]: Exhibit "J-3." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "K-3."

Copy.

At a special meeting of the North Alaska Steamship Company held July 8, 1904, the following resolution was adopted.

"Resolved that the Counsel of this Company notify Mr. Waterhouse that the Company cannot meet the terms of the contract for the purchase of the Steamship Garonne, and that Counsel confer with Mr. Waterhouse with full authority from this Board to take any steps necessary to protect the Company's interest.

NORTH ALASKA STEAMSHIP CO.,

JOHN B. LEAKE,

Secy.

[Endorsed]: Exhibit "K-3." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "L-3."

New York, July 8th, 1904.

North Alaska Steamship Company.

Gentlemen: By terms of our conditional contract of sale of the Steamship "Garonne" to you it was provided that deferred payments should be evidenced by notes of your company and secured by a first mortgage on the steamer and by such additional collateral security as should be satisfactory to us. It was also further provided that your company should give us a Guaranty Company's bond, protecting us and the steamer from any lien or claims for supplies or repairs that might be incurred by you at any time before the payment of our debt in full. It was also provided in said agreement that these securities and bonds were to be furnished to us on or before the tenth day of March, 1904. None of these conditions have been complied with by you.

There is now a balance due us of \$37,641, with interest, since June 2d, 1904, and there are claims and demands outstanding against the steamer, incurred by you in the purchase of supplies and material for repairs, amounting to something over \$30,000 which

are unpaid and for which the holders claim a lien against the steamer.

We now notify you that unless you are prepared to and will at once complete the performance of your contract by accepting the title to the steamer, executing a mortgage and notes for the deferred payments, furnish the bond from the Guaranty Company, indemnifying us against any claims against the steamer, and furnish the additional collateral security for preferred payments due us, that security to be to our satisfaction, we will exercise the right reserved to us under the contract of canceling your option of purchasing the said steamer and declare a forfeiture of any rights you would otherwise have in said contract, and also will retain the payments heretofore made to us thereon.

We are now and have been since the tenth day of March last, ready and prepared to execute a bill of sale to you of the steamer upon your compliance with the terms of said contract, but we are not willing to allow the matter to stand open in its present shape, and we require that you either perform the contract or submit to a forfeiture of your rights under it at once.

Yours truly,

(Signed) FRANK WATERHOUSE & CO.

[Endorsed]: Exhibit "L-3." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun.

16, 1906. A. Reeves Ayres, Clerk. A. N. Moore,
Dep.

Defendants' Exhibit "M-3."

(On Letterhead North-Alaska Steamship Company.)

New York, June 9, 1904.

Mr. Frank Waterhouse, Holland House, New York.

Dear Sirs: You are hereby notified that the North Alaska Steamship Company refuses to comply with the terms of the contract for the purchase of the Steamship Garonne existing between yourself, Frank Waterhouse & Co., Inc., and the North Alaska Steamship Company.

You are further notified that the North Alaska Steamship Company claims a lien upon the Steamship Garonne to the amount of all payments made by the North Alaska Steamship Company or for its benefit, whether upon the purchase price or otherwise.

Very truly yours,

NORTH ALASKA STEAMSHIP CO.,

J. B. LEAKE, Secy.

[Endorsed]: Exhibit "M-3." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "N-3."

Seattle, Aug. 2, 1904.

Copy.

F. S. Pusey, Esq., 101 Broadway, New York.

Dear Sir: I duly received your telegram of the 15th ult., reading as follows:

"Have you advised of collection of trustee freight money? Just returned yesterday. Please wire present status of our joint claims.

(Sgd.) FRANK S. PUSEY."

This was not replied to, for the sole reason that I was not in possession of your address, and had no means of knowing where a telegram would reach you, and it was only through your letter of July 27th, which reached me yesterday, that I learned of your address.

I must confess to a feeling of surprise and annoyance at the tone of your above-mentioned letter, for the reason that it was specifically understood and put in writing, that I was to be in no way personally responsible to you, for the collection of your debt against the North Alaska Steamship Co. I agreed to act in the capacity of trustee, solely as a matter of accommodation to you, and in that capacity to receive and remit to you, the money which the officers of the North Alaska S. S. Co. promised to

remit to you from Cape Nome, and to pay to you, out of the revenues of their company thereafter. This was the only duty that I undertook, in my capacity as trustee. The money has not been remitted to me from Cape Nome, therefore I have had no opportunity to receive it or forward it to you. The North Alaska Steamship Company became defunct, and has retired from business. In the settlement of my own affairs with the company, I was obliged to take back the s s "Garonne," and assume an indebtedness which the North Alaska S. S. Co. had loaded her with, amounting to almost \$35,000. I took the steamer back and assumed the indebtedness, and subsequently sold her to another corporation. I have no opportunity for protecting your claim. When I was in New York, I was informed that both yourself and General Dodge were out of the city. An effort to get into communication with you was made several times while I was there. I have no idea what disposition was made of the funds that were to be collected by Mr. Smith at Cape Nome, as I have received no advice from either him or from Capt. Ferguson, regarding the same. The settlement I was obliged to make with the North Alaska S. S. Co. was very unsatisfactory to me.

I enclose herewith notes and other papers, which I have been holding in this connection, for you. I re-

gret very much that I have been unable to collect this money for you, but the circumstances have been as above.

Kindly acknowledge receipt of enclosures.

Very truly yours,

(sgd) FRANK WATERHOUSE.

Enc.

[Endorsed]: Exhibit "N-3." Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "O-3."

Seattle, Feb. 1, 1904.

Copy.

W. Ferguson, Philadelphia.

Price Garonne \$85,000; will pay you commission 2½%. Other parties in close negotiations on same terms; steamer will be sold to first comer.

FRANK WATERHOUSE.

Seattle, Feb. 3, 1904.

W. H. Ferguson, New York.

Your \$1,000 received and accepted, and I now confirm sale Garonne, provided you pay me \$14,000 Feb. 15, deferred payments to be made as follows: \$10,000 March 10; \$10,000 June 15; \$5,000 Sept. 15,

\$5,000 Nov. 15; all this year; \$5,000 Feb. 15; \$5,000 Apr. 15; \$5,000 June 15; \$5,000 Aug. 15; \$5,000 Oct. 15; \$10,000 Dec. 15; all 1905; \$5,000 Mar. 15, 1906. Deferred payments to be secured by first mortgage on steamer, assignment marine insurance, corporation bond guaranteeing vessel against indebtedness, and other security which shall be satisfactory to me. Sale conditioned on terms and representations my letter to you Jan. 26th. Confirm this understanding.

FRANK WATERHOUSE.

Seattle, Feb. 10, 1904.

W. H. Ferguson, New York City.

Received your letter 5th; a vital condition sale Garonne to you was that sale should be entirely completed by Feb. 15th, by exchange of steamer for \$15,000 cash, notes, mortgage bond and other satisfactory collateral. Am willing accept \$14,000 next Monday, provided you agree execute notes, mortgage bond, and deliver securities by March 1st, or forfeit the \$15,000 if you fail; but I want you to advise by wire what character of collateral to deferred payments you will furnish, in addition to mortgage and bond, so I may pass upon same by Monday. I guarantee Garonne good insurable risk and will pass U. S. inspection for commission, by expenditure on your part of about \$25,000. Am now doing considerable work on her my own expense, preparatory to

inspection. Other parties anxious purchase her next Monday at same price, for practically cash.

FRANK WATERHOUSE.

Seattle, Feb. 12, 1904.

W. H. Ferguson, New York City.

Has Washington National Bank, Seattle, been instructed honor my draft \$14,000 next Monday.

FRANK WATERHOUSE.

Seattle, Feb. 16, 1904.

W. H. Ferguson, New York City.

I received and receipted to Hastings for \$14,000, account purchase Garonne yesterday.

Seattle, Mar. 28, 1904.

C. B. Smith, New York City.

I have advanced \$3,500 to pay insurance premiums and for work on Garonne on your account since you purchased her on Ferguson's promise you would remit enough money to reimburse me and take care future necessary expenses. Please wire definitely when I shall receive the money already advanced and be placed in funds to continue the work. Also wire if you are prepared complete purchase of steamer.

FRANK WATERHOUSE.

Seattle, Mar. 28, 1904.

C. B. Smith, New York City.

Had arranged start east next Saturday; expected be New York April 7th. Cannot matter be fully

closed on my arrival there. If not please wire positive date you will be here, please remit by telegraph \$3,500 to pay for work already done on steamer by Fergusons order and for insurance premium advanced by me.

FRANK WATERHOUSE.

Seattle, Mar. 31, 1904.

C. B. Smith, New York City.

Please telegraph reply message 29th. Shall be compelled discontinue work now proceeding on steamer unless you arrange immediately to pay for same.

FRANK WATERHOUSE.

Seattle, Apr. 5, 1904.

C. B. Smith, New York City.

Wire Waterhouse direct to draw five thousand ten days sight to cover expenditures Garonne. Rush answer.

W. H. FERGUSON.

Seattle, Apr. 6, 1904.

C. B. Smith, New York.

Received telegram yesterday from Occidental Securities Co. authorizing draft on them for \$5,000. Presume this your account. Not knowing Securities company will not draw unless am guaranteed draft will be paid. Please arrange with New York Bank to telegraph correspondent here to honor my draft on Securities company or on you for five thousand at

ten days sight. Cannot continue work on steamer unless placed in funds.

Seattle, May 11, 1904.

C. B. Smith, New York City.

Cannot permit work Garonne proceed unless received immediately necessary funds. Bills amounting approximately \$5,000 including drydock expenses are here for payment and must be promptly met. Steamer is here, in splendid condition, will be entirely completed, ready for sea by June first, if necessary expense funds promptly received from you. Can I also absolutely depend on your taking up balance purchase price by May 15th as promised. If not, what amount money can I depend on receiving account purchase price by that date. Please state exactly what I may expect, without any chance failure. To meet certain obligations of my own, need \$15,000 on 13th can you arrange let me have this amount positively on that date? Please wire positive reply to these questions today.

FRANK WATERHOUSE.

Seattle, May 12, 1904.

Occidental Securities Company, New York.

Yesterday's telegram unsatisfactory. Am anxious accommodate you but large amount work in progress on Garonne which cannot and will not permit to continue on my account, unless I immediately receive

funds to pay for same. Sincerely hope you will not compel me to have work suspended.

FRANK WATERHOUSE.

Seattle, May 13, 1903.

C. B. Smith, New York City.

Have received formal notice from Waterhouse today that unless he received 3000 on account of expenses already incurred, today, and 2000 additional on Monday, for expenses incurred which will have to be paid that day, all work will be discontinued on steamer tomorrow evening. He also insists that he shall receive \$15,000 at least, by the 15th on account of purchase price, or sale will be cancelled and money already paid forfeited. Waterhouse evidently anxious accommodate us all he can, but unable to continue advancing money or extend payment of purchase, unless above amount immediately forthcoming. Am satisfied will adopt measures stated and the situation very serious one, require immediate attention. Strongly advise you attend to this immediately and communicate promptly with Waterhouse.

W. H. FERGUSON.

Seattle, May 13, 1904.

Charles B. Smith, New York.

No reply my telegram of yesterday. Please take notice unless I receive \$3000 today and \$2000 additional Next Monday all work on Garonne will be

discontinued tomorrow night also unless I receive \$15,000 next Monday, on account of purchase price, or the satisfactory securities covering deferred payments sale will be declared cancelled and money already paid forfeited.

FRANK WATERHOUSE.

Seattle, May 17, 1904.

C. B. Smith, New York.

Received no money. Additional bills for work, supplies ordered by Ferguson on Garonne's credit and account, coming in. My patience being rapidly exhausted. You must remit ample funds immediately or shall take necessary steps protect myself. Please consider this an ultimatum.

FRANK WATERHOUSE.

Seattle, May 20, 1905.

C. Smith, New York.

Unless I receive at least 5000 here by tomorrow noon, to partially protect me against bills due and expenses incurred on account of Garonne my account, shall turn matter over to my attorneys, to take necessary steps to cancel sale. Am so situated that I have no alternative in matter. Earnestly hope you will protect yourself, by forwarding money in time.

FRANK WATERHOUSE.

Seattle, May 23, 1904.

C. B. Smith, New York.

Received 2500 from you Saturday. Same day advanced 2000 for you, steamer must coal next Wednesday, expense \$5000. Insurance must be placed this week, expense \$6000, year premium. Food supplies must be put aboard this week, expense 6000. You now owe me money advanced \$5000. If balance purchase price paid immediately cash, or satisfactory securities, you will be at liberty contract all bills you desire Garonne's credit, and pay same out of freight and passenger receipts available June 2. If purchase not completed immediately, must have cash before can permit coal supplies and insurance be purchased steamer's credit. Please advise quickly what course you will pursue.

FRANK WATERHOUSE.

Seattle, May 26, 1904.

Occidental Securities Co., New York City.

Your telegram yesterday unsatisfactory. Neither cargo, coal nor supplies will go aboard steamer until I receive money pay therefor. Have instructed attorneys delay further action until receipt your reply this message, which shall expect promptly.

FRANK WATERHOUSE.

Seattle, May 27, 1905.

Occidental Securities Co., New York.

Received \$5000 yesterday account expenses. Will you remit \$10,000 additional today, supplies: Requisitions must be filled immediately insure vessel sailing second.

FRANK WATERHOUSE.

Seattle, May 21, 1905.

Occidental S. Co., New York.

We will accept \$5,000 cash from N. Y. at once, and \$22,500 out of receipts, balance to be paid in 30 days, secured by mortgage and note. Remit \$5,000 immediately? Very imperative and must close at once.

FRANK WATERHOUSE.

Seattle, June 10, 1904.

J. B. Leake, N. Y.

Have you executed mortgage and remitted money pay expense, bills here. These matters pressing, require immediate attention. Answer.

FRANK WATERHOUSE.

Seattle, June 11, 1904.

J. B. Leake, N. Y.

Underwriters demand immediate payment Garonne insurance amounting to 6600. They decline to issue covering notes and threaten cancel insurance, unless premiums paid immediately. Smith Ferguson assured me money for this purpose would be

remitted from N. Y. immediately after ship sailed. Must be telegraphed reach me by Monday without fail. Answer.

FRANK WATERHOUSE.

Seattle, June 13, 1904.

J. B. Leake, N. Y.

If you remit 13,000 to-morrow for expenses, execute mortgage at Chase National immediately and pay me eight thousand, six hundred, June 22, I will extend balance of payments as follows: \$10,000 with interest on first note until July 12th; entire amount of second note until Aug. 15. Answer.

FRANK WATERHOUSE.

Seattle, May 14, 1904.

C. B. Smith, N. Y.

Your last telegram unsatisfactory. Do not understand nature contract Dodge, which protects me. I require 5000 cash Monday for payment bills already incurred, and satisfactory security for deferred purchase payments. If you remit this Monday and 5000 additional account purchase, to reach me not later than next Wednesday, also 5000 to reach me May 25th, I will extend date for delivery of securities, or for making payment in full in cash, until June 5th. Am willing accommodate you every possible way, but there are limitations to my ability.

Seattle, June 14, 1904.

W. H. Rowe, N. Y.

Will not let conditions remain as at present. Insist debts against Garome now due, be paid immediately, and mortgage be executed immediately. Will expect prompt reply stating definitely what you intend to do.

FRANK WATERHOUSE.

Seattle, July 7, 1905.

Frank Waterhouse, N. Y.

900 only received from Nome. Chapin not received Pusey money. This week's pay-roll 560, next week 330, including Captain Lawe, steward, purser half pay—

Seattle, July 16, 1904.

C. S. Meade, N. Y.

Your wire date. Money received. Forward quickly original bills you took east against steamer. Bill sale will be forwarded Monday. Does suggested name steamship company stand.

Seattle, June 13, 1904.

J. B. Leake, New York City.

If you remit thirteen thousand to-morrow for expenses, execute mortgage at Chase National immediately and pay me eight thousand six hundred, June 22d, I will extend balance of payments as follows: Ten thousand with interest on first note until July

12th; entire amount of second note until August 15th.
Answer.

FRANK WATERHOUSE.

Seattle, June 13, 1904.

J. B. Leake, New York City.

Thirteen thousand does not include insurance. Hastings promises furnish his statement, which is necessary complete mine, by Wednesday; will then forward mine promptly.

FRANK WATERHOUSE.

Seattle, June 14, 1904.

W. H. Rowe, New York City.

Will not let conditions remain as at present. Insist debts against Garonne, now due, be paid immediately, and mortgage be executed immediately. Will expect prompt reply, stating definitely what you intend to do.

FRANK WATERHOUSE.

Seattle, June 15, 1904.

W. H. Rowe, New York City.

When your telegram arrived yesterday was out of town. Message repeated over telephone and misunderstood. Certainly agree let conditions my telegram 13th stand until arrival. Mean early next week. Strongly advise you remit money promptly pay debts now due protect your own credit, save me embarrassment. If you will remit six thousand ex-

penses by to-morrow will stand off balance bills until next week.

FRANK WATERHOUSE.

[Endorsed]: Exhibit "O-3." Filed in the U. S. Circuit Court. Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "P-3."

THE UNITED STATES OF AMERICA.

BILL OF SALE OF REGISTERED VESSEL.

To All to Whom These Presents Shall Come, Greeting:

Know ye, that the Frank Waterhouse & Co., inc., a corporation, organized under the laws of the State of Washington, by Frank Waterhouse, its president, sole owner of the Str. or vessel, called the Garonne of Seattle, Wash., of the burden of twenty-three hundred and nineteen tons or thereabouts, for and in consideration of the sum of one dollar and other good and valuable consideration, lawful money of the United States of America, to it in hand paid, before the sealing and delivery of these presents, by the North Alaska Steamship Company, a corporation, organized under the laws of the State of New York, the receipt whereof it does hereby acknowl-

edge and is therewith satisfied, contented, and paid, have bargained and sold, and by these presents do bargain and sell, unto the said North Alaska Steamship Company, its successors and assigns, all of the said Str. or vessel, together with the masts, bowsprit, sails, boats, anchors, cable, tackle, furniture, and all other necessaries thereunto appertaining and belonging; the certificate of the registry of which said steamer or vessel is as follows, viz.:

Register No. 108.	Official Number.	
	Numerals.	Letters.
	86504	K. P. T. V. V.

CERTIFICATE OF REGISTRY.

In pursuance of Chapter I, Title XLVIII, 'Regulation of Commerce and Navigation,' Revised Statutes of the United States, W. P. Prichard, Secy. of Frank Waterhouse & Co., Inc., having taken and subscribed the oath required by law, and having sworn that he, Frank Waterhouse & Co., Inc., is the only owner of the vessel called the Garonne of Seattle, Wash., whereof R. McFarland is at present master, and is a citizen of the United States, and that the said vessel was built in the year 1871, at Goon, Scotland, as appears by R. R. 48B issued at Seattle, Wash., May 12, 1900, surrendered O. C. and said register having certified that the said vessel has four decks, and three masts; and that her length is 371

feet and — tenths; her breadth 41 feet and 4 tenths; her depth 20 feet and 4 tenths; her height 15 feet and 8 tenths; that she measures twenty-three hundred and nineteen tons, viz.:

	Tons.	100ths.
Capacity under tonnage deck.....	1938	19
Capacity between decks above tonnage deck	1962	93
Capacity of inclosures on upper deck, viz.....	44	54
	3945	
Gross Tonnage....	3945	

Deductions under Section 4153, Revised Statutes, as amended by Act of March 2, 1905; Crew space 233.79; Master's cabin ..233.79

Steering gear, —; Anchor gear, 46.62 117.74

Boatswain's stores —; Chart-House —; Storage of sails 12.03.. 12.03

Donkey engine and boiler, —; Propelling power
1262.61.. 1626.17 1626 17

Net Tonnage.....2319

The following described spaces, and no others, have been omitted, viz: ——— and that she is a str., has

a figure-head and a elliptic stern; and the said —— having agreed to the description and admeasurement above specified, according to law, said vessel has been duly registered at the Port of Port Townsend.

Given under my hand and seal at the Port of Port Townsend, this 4th day of May, in the year one thousand nine hundred and one (1901).

F. D. HEUSTIS, [Seal]

Collector of Customs.

No. —— (Seal)

Naval Officer.

EUGENE TYLER CHAMBERLAIN,

Commissioner of Navigation.”

[Seal of United States Treasury.]

To have and to hold the said said Str. Garonne and appurtenances thereunto belonging unto the said North Alaska Steamship Company, its successors and assigns, to the sole and only proper use, benefit and behoof of the said North Alaska Steamship Company, its successors and assigns forever; and the said Frank Waterhouse & Co., Inc., has promised, covenanted, and agreed, and by these presents does promise, covenant, and agree, for itself, its successors and assigns, to and with the said North Alaska Steamship Company, its successors and assigns to warrant and defend the said title to said

Str. or vessel, and all the other before-mentioned appurtenances, against all and every person and persons whomsoever.

In testimony whereof, the said Frank Waterhouse & Co., Inc., has caused these presents to be signed by Frank Waterhouse, its president, and its corporate seal hereunto set this 8th day of April, in the year of our Lord one thousand nine hundred and four.

FRANK WATERHOUSE & CO., Inc. [Seal]

By FRANK WATERHOUSE, President.

Attest:

W. H. BOGLE,
Secretary.

State of Washington,
County of King,—ss.

I, Frank P. Dow, a notary public in and for the State of Washington, residing at Seattle, Wash., in the above-named county and State, duly commissioned, sworn and qualified, do hereby certify that on this — day of ———, A. D., 190—, before me personally appeared Frank Waterhouse and W. H. Bogle, to me known to be the individuals who as President and Secretary, respectively, of Frank Waterhouse & Co., Inc., the corporation that executed the within instrument, and acknowledged the said instrument to be the free and voluntary act and

deed of the said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

Given under my hand and official seal this 8th day of April, 1904.

[Notarial Seal] FRANK P. DOW.

[Endorsed on back]: "Bill of Sale of Registered vessel. Frank Waterhouse & Co., Inc., to North Alaska Steamship Co., Steamship called the Garonne. Frank P. Dow, Custom House Broker, Seattle, Wash."

Slip attached to documents: "This is now complete for delivery when you add the name of the buyer and the consideration. (Signed) Frank P. Dow."

[Endorsed]: Exhibit "P-3." Filed in the U. S. Circuit Court. Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Defendants' Exhibit "Q-3."

To All to Whom These Presents Shall Come or may Concern, Greeting:

Know Ye, That Frank Waterhouse and Company, a corporation, having its principal office at Seattle, State of Washington, for and in consideration of

the sum of one dollar (\$1.00) lawful money of the United States of America, to it in hand paid by The North Alaska Steamship Company, a corporation, having its principal office at the city of New York, State of New York, the receipt whereof is hereby acknowledged, have remised, released and forever discharged and by these presents do for itself, its successors and assigns remise, release and forever discharge the said North Alaska Steamship Company, its successors and assigns of all and from all, and all manner of action and actions, cause and causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims or demands whatsoever in law or in equity, which against The North Alaska Steamship Company, its successors and assigns ever had, now has or which its successors and assigns hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents.

In witness whereof the said Frank Waterhouse & Company has by the hands of its President and Secretary executed this instrument and affixed a seal on the ninth day of July, 1904.

State of New York,
County of New York,—ss.

On this 9th day of July, 1904, before me personally came William H. Bogle, to me known, who, being duly sworn did depose and say that he resided in Seattle, State of Washington; that he is the secretary of Frank Waterhouse and Company, the corporation described in and which executed the above instrument, that he signed his name thereto with the intent to bind the said corporation to the terms hereof.

THOMAS H. McKEE,
Notary Public,
New York County.

[Endorsed]: Exhibit "Q-3." Filed in the U. S. Circuit Court. Western Dist. of Washington. Jun. 16, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

No. 1290.

*In the Circuit Court of the United States for the
Western District of Washington, Northern
Division.*

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Inc. (a Corpora-
tion), and FRANK WATERHOUSE,

Defendants.

Notice of Taking Depositions.

To the Aforesaid Defendants, and to W. H. Bogle,
Esq., their Counsel:

You and each of you are hereby notified that, in accordance with an order of this Court made in this cause on August 7th, 1905, appointing Willis Van Valdenburg, Esq., a special examiner to take testimony herein, the testimony of Grenville M. Dodge and Frank S. Pusey, witnesses on behalf of the complainant herein, will be taken before said Willis Van Valkenburg, Esq., at the law offices of Taft & Sherman, No. 15, William Street, in the city of New York, State of New York, at 10 o'clock A. M., on the 21st day of September, 1905, and if not concluded on said date will be continued from time to time, as may be determined by Special Examiner and counsel then

present representing the parties hereto, until finally concluded.

Dated, Seattle, Washington, August 28th, 1905.

G. W. KING,
Solicitor for Complainant.

*In the Circuit Court of the United States for West-
ern District of Washington, Northern Division.*

No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Inc. (a Corpora-
tion), and FRANK WATERHOUSE,

Defendants.

Order Appointing Special Examiner.

Comes now the complainant herein, by Geo. H. King, Esq., his Counsel, and moves the Court for an order that Willis Van Valkenburg, Esq., a notary public, of New York City, New York, or some other officer authorized by law to take depositions, be appointed Special Examiner to take the depositions of certain witnesses in said New York City, to be used on the trial of this cause, and it appearing necessary to prevent a failure of justice, that the testimony of said witnesses should be taken.

It is ordered that Willis Van Valkenburg, Esq., a Notary Public of New York City, New York, be, and he hereby is appointed a Special Examiner of this court, and that he be, and he is hereby authorized and empowered to take and transmit to this court the testimony of Grenville M. Dodge and Frank S. Pusey and each of them, witnesses in behalf of said complainant, in answer to oral questions to be put to said witnesses by the respective parties at the time of taking such testimony, 15 days notice of time and place of depositions to be given.

Done in open court this 7th day of August, 1905.

C. H. HANFORD,

Judge.

Filed in the U. S. Circuit Court, Western Dist. of Washington. Aug. 7, 1905. A. Reeves Ayres, Clerk. A. N. Moore, Deputy.

United States of America,
Western District of Washington,—ss

I, A. Reeves Ayres, Clerk of the Circuit Court of the United States for the District of Washington, do hereby certify that I have compared the foregoing copy with the original order appointing Special Examiner, in the foregoing entitled cause, now on file and of record in my office at Seattle, and that the same is a true and perfect transcript of said original and of the whole thereof.

Witness my hand and the seal of said court, this
7th day of August, 1905.

[Seal]

A. REEVES AYRES,
Clerk.

By H. M. Walthew,
Deputy.

[Endorsed]: Certified Copy of Order Appointing
Examiner.

*In the Circuit Court of the United States, for the
Western District of Washington, Northern
Division.*

No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Incorporated (a
Corporation), and FRANK WATERHOUSE,
Defendants.

Depositions.

Testimony on behalf of the complainant, taken on
the 21st day of September, 1905, under the sixty-
seventh rule in Equity, as amended, before Willis
Van Valkenburgh, Esq., Special Examiner, ap-
pointed by order of the Hon. C. H. Hanford, Judge,

dated August 7th, 1905, and pursuant to notice duly given under said order.

Appearances:

GEORGE H. KING, for the Complainant,
TAFT & SHERMAN (Theodore M. Taft), of
Counsel;
W. H. BOGLE, for the Defendants,
GRIGGS, BALDWIN & BALDWIN (David M.
Dean), of Counsel.

It is hereby stipulated that the depositions of Gen. Grenville M. Dodge and Frank S. Pusey be taken down in shorthand by the Special Examiner and shall be put into typewriting.

Counsel for complainant handed to the Special Examiner the order appointing him and the notice of taking the depositions.

It is hereby stipulated between the counsel that the taking of the depositions be adjourned to the 28th day of September, 1905, at eleven o'clock in the forenoon, at the office of Taft & Sherman, 15 William Street, New York City, with the same force and effect as if taken on this day.

GRENVILLE M. DODGE

vs.

FRANK WATERHOUSE & CO., et al.

New York, September 28th, 1905.

Met pursuant to adjournment.

Appearances:

THEODORE M. TAFT, for Complainant:

DAVID M. DEAN, for Defendants.

It is stipulated by and between counsel that all objections to the competency, relevancy and materiality of the testimony and any objections except objections as to the form of the questions, may be taken upon the reading of the depositions on the trial of the case, and such objections need not be made at this hearing.

Gen. GRENVILLE M. DODGE, the complainant, called as a witness in his own behalf, being duly sworn, testified as follows:

Direct Examination of Mr. TAFT.

Q. What is your full name, Gen. Dodge?

A. Grenville M. Dodge.

Q. And have you been living here in New York for some time?

A. Yes, for a good many years.

Q. And are you in business in New York?

A. Yes.

Q. Where have you been doing business?

A. Well, for the last fifteen or eighteen years—for the last eighteen years anyhow, at No. 1 Broadway.

(Deposition of Gen. Grenville M. Dodge.)

Q. What is your business?

A. Railroading; I am at the head of several roads and I am also engaged in constructing railroads.

Q. You are designated as a civil engineer?

A. That is my profession.

Q. You are the complainant in this suit against Frank Waterhouse & Company and Frank Waterhouse?
A. I am.

Q. Where do you live in New York, or where have you been living for the last three or four years?

A. At the Union League Club.

Q. You are a member of that club?

A. I am.

Q. Are you one of the few honorary members?

A. I am.

Q. Have you examined the Trow City Directory for the last four or five years to see whether you appear in that directory?

A. Yes; I think I have seen that directory every year for four or five years; my name appears in it.

Q. That directory shows your business address at No. 1 Broadway and your house address at the Union League Club?
A. Yes.

Q. The Trow City Directory is a standard directory for this city, is it not?
A. It is.

Q. You are connected with a good many different organizations, are you not?
A. Yes.

(Deposition of Gen. Grenville M. Dodge.)

Q. Will you state some of them?

A. Well, I am connected with the Fort Worth and Denver City Railway, the Colorado Southern Railway, the Wichita Valley Railway, and other roads; and I am a director in the Bowling Green Trust Company. I am a member of three clubs.

Q. Are you a member of the Loyal Legion?

A. Yes; I have been the Commander of it, and I am a member of it.

Q. You are pretty well known in the City of New York among financial and general business men, are you not?

A. Well, yes; I do a good deal of business with a good many people.

Q. You are acquainted with William F. King?

A. I am.

Q. What firm is he connected with?

A. Calhoun, Robbins & Company.

Q. And are you personally known to him?

A. I am; I have known him a great many years.

Q. And you knew his wife?

A. Yes, I knew his wife.

Q. Before she married him and afterwards?

A. Yes.

Q. This William F. King is the same Mr. King who was connected with the North Alaska Steamship Company? A. Yes.

(Deposition of Gen. Grenville M. Dodge.)

Q. And subsequently connected with the Merchants' and Miners' Steamship Company?

A. Yes.

Q. Were you and are you known to Frost & McKee, the attorneys for the North Alaska Steamship Company? A. Yes.

Q. And were you and are you known to W. H. Ferguson, who arranged the sale of the "Garonne" from Waterhouse & Co. to the North Alaska Steamship Company? A. Yes.

Q. And you were and are known to the officers of the North Alaska Steamship Company?

A. Yes.

Q. In the spring of 1904 did you lend any money to the North Alaska Steamship Company?

A. I did.

Q. Do you recall how much you had loaned to them up to the 13th of May, 1904?

A. I think it was about \$15,000, but I cannot state exactly—yes, I loaned them \$13,500.

Q. (Papers shown witness.) I show you a paper, and ask you what that is?

A. That is an agreement between Mr. Frank S. Pusey, acting for me, and Charles B. Smith, for the North Alaska Steamship Company, and Charles B. Smith personally.

(Deposition of Gen. Grenville M. Dodge.)

(Said paper was marked "For Identification Complainant's Exhibit 1.")

Q. It was on May 13th, 1904, that the agreement was made which set forth the indebtedness to you of \$13,500 and agreeing to give you a mortgage on the steamship "Garonne." Did you receive a mortgage on the steamship "Garonne" in compliance with that agreement? A. I did not.

Q. Did you, after the 13th of May, 1904, become anxious in regard to the payment of this indebtedness to you by the North Alaska Steamship Company? A. I did.

Q. What did you do in pursuance of that anxiety?

A. I instructed Mr. Frank S. Pusey to go immediately to Seattle and take proper measures to secure my loan or secure the mortgage on the loan, and, if that was not done, I instructed him to seize the ship or attach the vessel.

Q. Where was the ship at that time?

A. At Seattle, Washington.

Q. Can you tell me the date on which you gave Mr. Pusey those instructions, about?

A. It was a very short time after the signing of this agreement.

Q. Well, was it between that time and the 1st of June?

A. Yes, between that time and the 1st of June.

(Deposition of Gen. Grenville M. Dodge.)

Q. Did you do anything in regard to letters of introduction to Mr. Pusey to people out in Seattle?

A. Yes; I gave Mr. Pusey a letter to Grenville M. Phillips, who was a merchant there, authorizing him to do everything he could to aid Mr. Pusey in the matter; and then I went to the Bowling Green Trust Company and obtained a letter from the Bowling Green Trust Company to their correspondent in Seattle, instructing them to aid Mr. Pusey financially or in any way he might require.

Q. What was the object of his getting financial assistance out there?

A. If we tied up that boat, we expected to have to give bonds, and it was necessary for me to provide for the giving of those bonds, to arrange with some people out there for giving the bonds.

Q. Are you known in Seattle?

A. Yes, I am known there.

Q. Have you lived there?

A. I have not lived there, but I have constructed roads there and have had charge of roads or been connected with roads that ran in there.

Q. Name some of the roads and give the times at which you were connected with them?

A. As chief engineer of the Union Pacific I made the first survey into that country, to Portland, and extended it on to Tacoma; and then for a few years

(Deposition of Gen. Grenville M. Dodge.)

we ran what was known as the Oregon Navigation Company, which was afterwards leased, and it was used and run by the Union Pacific. I went out there afterwards with Mr. Villard and bought that property there. I was afterwards connected with building a road from Portland to Seattle.

Q. During what years were you so engaged?

A. That ran all the way from 1867 up to 1895, perhaps. We ran the first steamship from there to Alaska.

Q. On June 2d, 1904, do you know the amount that was due to you from the North Alaska Steamship Company? A. Yes, \$10,000.

Q. Have you received from any source any part of that \$10,000? A. I have not.

Q. And there is still due to you from the North Alaska Steamship Company \$10,000 with interest thereon from that date? A. Yes.

Q. In your bill of complaint you state that on June 2d, 1904, a note was given by the North Alaska Steamship Company to Frank Waterhouse & Company, as trustee for you, for \$10,000; also an agreement was made on that date signed by Frank Waterhouse & Co. agreeing to take a mortgage on the steamship "Garonne," to secure themselves for \$37,671.46 and to secure you for \$10,000. This is admitted by the answer. Now, will you tell me how

(Deposition of Gen. Grenville M. Dodge.)

Frank Waterhouse & Co. or Frank Waterhouse carried out this agreement with you?

Mr. DEAN.—That question is objected to as to form and upon the further ground that it is instructive to the witness.

A. They never carried it out in any manner.

Q. What communication did you have with them or either of them after June 2d, 1904?

A. I never had any.

Q. Have they or either of them ever written to you personally? A. They have not.

Q. So far as you know have they or either of them ever attempted to communicate with you?

A. They have not.

Q. When did you first learn that the North Alaska Steamship Company had given back the steamship "Garonne" to Frank Waterhouse & Co. or Frank Waterhouse?

A. I think I first learned of it in July.

Q. In July, who called your attention to that?

A. Mr. Pusey.

Q. You received no word whatever from Frank Waterhouse or from Frank Waterhouse & Co.?

A. None whatever.

Q. What was the first communication from Frank Waterhouse or Frank Waterhouse & Co. to anybody

(Deposition of Gen. Grenville M. Dodge.)

concerning the resale of the steamship "Garonne" to the Merchants' and Miners' Steamship Company?

A. It was a communication from them to Mr. Pusey, some time in August, 1904.

Q. All these transactions that you are testifying about in connection with the "Garonne" were in the year 1904? A. Yes.

Q. Where were you during the month of July and the month of August, 1904?

A. I was in the city here, say, two or three days each week and a few miles out of the city on other days.

Q. Were you in telephonic communication with your office daily?

A. I was, and my mail was sent to me.

Q. Now, Gen. Dodge, would there have been any difficulty in Frank Waterhouse or Frank Waterhouse & Co. communicating with you in New York City during the months of July and August, 1904, if they or either of them had really wanted to find you?

Mr. DEAN.—I object to that question on the ground that it calls for a conclusion.

A. There would have been no difficulty in communicating with me.

Q. Was there any difficulty at any time in July or August for any one in the city of New York who

(Deposition of Gen. Grenville M. Dodge.)

really wanted to get into personal communication with you, doing so?

(Objected to on the same ground.)

A. None whatever.

Q. Did you frequently during the year 1904 receive mail addressed to Gen. G. M. Dodge and Gen. Grenville M. Dodge, New York City?

A. I did; I don't know that I received it frequently, but it often came that way.

Q. If any one had looked into the Trow City Directory of the city of New York for Grenville M. Dodge, he would have found your address there?

A. He would.

Q. At No. 1 Broadway?

A. At No. 1 Broadway.

Q. Have you any knowledge of the matters concerned with the sale of the steamship "Garonne" to the Merchants' & Miners' Steamship Company, the details of it? A. No.

Q. Do you know what price the Merchants' & Miners' Steamship Company paid for the steamship "Garonne"?

A. I do not.

Q. You do not know, of course, then, whether it was a fair valuation or not?

A. I have heard what the price was.

Q. Yes, but I mean so far as your own knowledge is concerned.

(Deposition of Gen. Grenville M. Dodge.)

A. No, I do not, only what I have heard.

Q. And you had no knowledge of it at the time of the sale? A. No.

Q. Did you receive any notice from the North Alaska Steamship Company after June 2d, 1904, in regard to their giving up the steamship "Garonne" to Frank Waterhouse & Co.?

A. Mr. Smith informed me that the ship had been sold to this new company; he told me what the price was too.

Q. When did Mr. Smith tell you that?

A. It was after he came back from Alaska; it must have been in the fall.

Q. It was later than the 19th of August anyway?

A. Oh, yes, it was October or November; I could not state the exact date.

Cross-examination by Mr. DEAN.

Q. Have you the twelve thousand dollar note which you signed as part of the consideration for this money due to you, in your possession or under your control?

A. It is under my control, but I haven't got it in my possession.

Q. Is it under your control at the Bowling Green Trust Company? A. Yes.

Q. Do you remember to whom that note was made payable? A. No, I do not.

(Deposition of Gen. Grenville M. Dodge.)

Q. Did you sign it or endorse it?

A. I either endorsed it or made it a joint signature, I don't know which.

Q. You became responsible on it?

A. I paid the note myself.

Q. Do you remember whether you signed it jointly with Mr. Smith as an individual or with the North Alaska Steamship Company?

A. I do not. My impression is I endorsed it, but I won't be certain about it, because it is too long ago and it has passed out of my mind.

Q. And you are unable to state here from recollection whether your endorsement or your signing, in case you signed it as a maker with some one, was with Charles B. Smith individually, or with Charles B. Smith as President of the North Alaska Steamship Company?

A. I could not say that absolutely; I know that I paid the note and it was charged up to my account.

Q. The note was paid by the payment of the Ditmar note of \$5,000?

A. Yes; there was \$5,000 endorsed on it.

Q. The Ditmar note was collateral?

A. Yes.

Q. Was that turned over to you or to the bank?

A. To the bank.

(Deposition of Gen. Grenville M. Dodge.)

Q. And then, after that was credited upon the note, you paid the balance? A. Yes.

Q. By having it charged up to your account?

A. Yes, to my personal account.

Q. And that note is now under your control, so that you could produce it if they were to notify you to?

A. Yes; I suppose by sending my book over there I could get it.

Q. Do you remember when that was charged up to your account? A. When the note became due.

Q. It was some little time after the note became due, was it not, because the collateral was credited on it by the bank?

A. The collateral became due before the note did, and that was credited on it and when the note became due, it was charged up to me.

Q. And has your account been written up since then, so that it is entered in your settled account?

A. No, I do not think it has been; but my recollection is that the note is with the Bowling Green Trust Company, unless it has been taken out and sent to Seattle; I do not know whether that is so or not.

Q. So that it is simply entered and charged up to your open account with the bank? A. Yes.

Q. As to the condition of that account, you have no present recollection one way or the other, I sup-

(Deposition of Gen. Grenville M. Dodge.)

pose? A. What do you mean?

Q. Whether, if you please, it has been balanced, and there is a balance in your favor since the charging up of that note? A. Yes, I think it has.

Q. You have positive recollection about that one way or the other? A. No.

(By Mr. TAFT.)

Q. But you do know that the note has been charged up against your account? A. Yes.

Q. And you also know that the money which was obtained on that note of \$12,000 went into the purchase of the steamship "Garonne"? A. I do.

(By Mr. DEAN.)

Q. Could you just give us in what way you know that?

A. Mr. Smith, who was the head of the Alaska Steamship Company at that time, came to me—I had made a payment once before on the vessel of \$1,500—he came to me and showed me the telegram from Waterhouse & Co. urging the payment, and told me that unless they could raise this money to make that payment that day, they would default; and I went over to the bank with him; I objected very much to doing it, but, as a personal favor, I went over to the bank on his promise to me that the money should be returned to me or full security given me as quick

as they got this payment made; and I went over to the bank with him to raise the money for him and got the Bowling Green Trust Company to turn the money over to him, and, as he informed me then and there he sent it by telegraph; that was his statement to me.

Q. So that really your own knowledge if it is what Mr. Smith told you? A. Yes.

GRENVILLE M. DODGE.

Subscribed and sworn to before me this second day of October, 1905.

WILLIS VAN VALKENBURG,
Notary Public, Kings Co.

Special Examiner. Cert. filed in N. Y. Co.

Adjourned by consent of counsel to Friday, September 29th, 1905, at 10 o'clock A. M.

DODGE

v.

WATERHOUSE.

New York, September 29th, 1905.

Met pursuant to adjournment. Same appearance as before.

FRANK S. PUSEY, a witness called in behalf of the complainant, being duly sworn, testified as follows:

Direct Examination by Mr. TAFT.

Q. Mr. Pusey, what is your full name?

A. Frank S. Pusey.

Q. What is your address?

A. No. 1 Broadway.

Q. What relation are you to the complainant, Gen. Grenville M. Dodge? A. Son-in-law.

Q. Did you know of Gen. Dodge advancing any money to the North Alaska Steamship Company in the early part of 1904? A. Yes, sir.

Q. Do you know what that money was used for?

A. It was used in part payment of the purchase money of the steamship "Garonne."

Q. Will you state what the sale of the steamship "Garonne" was in which this money was used?

A. The agreement was entered into between Mr. Frank Waterhouse and Waterhouse & Co. with the North Alaska Steamship Company whereby the former entered into a contract to transfer and sell to the

(Deposition of Frank S. Pusey.)

North Alaska Steamship Company the steamship
“Garonne.”

Q. On May 13th, 1904, how much was owing to
Gen. Dodge for moneys advanced or loaned to the
North Alaska Steamship Company for the purpose
of purchasing the steamship “Garonne”?

A. \$13,500.

Q. Was there a written agreement made between
you as trustee for Gen. Dodge and the North Alaska
Steamship Company on that date?

A. Yes, sir.

Q. (Paper shown witness.) I show you a paper
marked yesterday for Identification “Complainant’s
Exhibit 1” and ask you what it is?

A. This is the agreement between Charles B.
Smith, the North Alaska Steamship Company, by
Charles B. Smith, President, and myself as Trustee
for Gen. Grenville M. Dodge.

Q. Where was that paper prepared?

A. That was prepared by the attorneys for the
North Alaska Steamship Company.

Q. Who were they?

A. McKee & Frost, at the office of McKee & Frost.

Q. Was that paper prepared after the negotia-
tions between you, representing Gen. Dodge, and the
North Alaska Steamship Company?

(Deposition of Frank S. Pusey.)

A. Yes, sir.

Q. When was that paper executed?

A. On the 13th day of May, 1904.

Q. And is that the agreement as it was delivered to you? A. Yes, sir.

Mr. TAFT.—I offer this agreement in evidence.

(Received in evidence and marked Complainant's Exhibit 1, by striking out the words "For Identif," Sept. 29, 1905.)

Q. When did you go to Seattle in regard to collecting this indebtedness or securing the indebtedness from the North Alaska Steamship Company to Gen. Dodge?

A. Between the 20th and 23d of May; I think it was the 21st of May, 1904.

Q. How did you happen to go?

A. I was instructed to go by Gen. Dodge, with positive instructions to secure beyond question of doubt this indebtedness of the North Alaska Steamship Company to him prior to the sailing of the steamship "Garonne," billed to sail June 2d, 1904.

Q. Was there any particular reason why you went out to Seattle at this particular time?

A. Yes, sir. The steamship was advertised to sail on the 2d of June, and I had information that she was well booked in the way of passengers and freight and

(Deposition of Frank S. Pusey.)

I considered it a prudent time to protect Gen. Dodge's interest in the ship.

Q. In what way to protect Gen. Dodge's interest?

A. Either by full payment of his claim, or by attaching the ship and garnisheeing the freight moneys.

Q. Up to the time you went to Seattle had anything been paid on the indebtedness due from the North Alaska Steamship Company to Gen. Dodge?

A. No, sir.

Q. Between the time that you arrived at Seattle and the 2d of June, when the agreement set forth in the bill of complaint was signed by Frank Waterhouse & Co., had the indebtedness been reduced?

A. Yes, sir; there was a payment of \$5,000 in New York City on the 1st day of June.

Q. How much was due on June 2d?

A. \$10,000 was due on June 2d.

Q. Had there been any increase in the amount from the North Alaska Steamship Company to Gen. Dodge from the 13th of May, which then was \$13,500, to the 2nd of June, when it was agreed that it was \$10,000?

A. Yes, sir; there was an agreement between the President of the Steamship Company, who was on the ground, and myself, that \$1500 additional would be allowed for my expenses and any costs that might

(Deposition of Frank S. Pusey.)

have been incurred in view of the fact that they had not met the payment due Gen. Dodge.

Q. Under the agreement of May 13th?

A. Yes, under that agreement.

Q. When did you arrive at Seattle?

A. On Friday, the 29th of May, 1904.

Q. What did you do there after you arrived?

A. I went at once to the Seattle National Bank, to whom I had a letter of introduction from the Bowling Green Trust Company, in which the Seattle National Bank were protected through this letter from the Bowling Green Trust Company in giving me and financial assistance I should need in case I had to file bonds under legal steps, such as garnisheeing freight moneys or attaching the vessel.

Q. Is Gen. Dodge a director of the Bowling Green Trust Company? A. Yes, sir.

Q. And is Frank Waterhouse, one of the defendants herein, a director of the Seattle National Bank?

A. Yes, sir; he was at that time.

Q. That is the bank to which you took letters of introduction? A. Yes.

Q. After you had presented your letters of introduction to the Seattle National Bank and had made your arrangements there, then what did you do?

A. First, before leaving them, I inquired and found out that I could get this financial protection,

(Deposition of Frank S. Pusey.)

and they told me the name of a bonding company that I could go to; and also they gave me the name of their city attorney, in case I should require his services; and from there I went to the office of Mr. Frank Waterhouse.

Q. Now tell what occurred at the office of Frank Waterhouse & Co.?

A. I sent in my card to Mr. Waterhouse—

Q. What did your card contain?

A. "Frank S. Pusey"—a personal card. He came out of his private office and I told him that I represented Gen. Grenville M. Dodge of No. 1 Broadway, New York, and that I was here to protect his interests in the steamship "Garonne," in compliance with the agreement signed by the Steamship Company and by me as Trustee for him, referred to herein, dated May 13th, 1904.

Q. Did you show this agreement of May 13th, 1904, marked "Complainants' Exhibit 1, Sept. 29, 1905," to Mr. Waterhouse? A. Yes, sir.

Q. Did he take it?

A. No; I kept it; he read it and looked it over and returned it to me; I did not leave it with him.

Q. Whom did you tell him you represented?

A. Gen. Grenville M. Dodge, of No. 1 Broadway, New York.

(Deposition of Frank S. Pusey.)

Q. Did Mr. Waterhouse say anything to you showing his knowledge of Gen. Dodge, and if so, what?

A. Yes, sir; when I mentioned Gen. Dodge's name, he said, "I have known of him very well on account of his prominence"; and I explained that he had been the Chief Engineer of the Union Pacific Railroad and had had charge of its construction and was one of the largest railroad builders in the country; and he showed from his conversation with me that he knew Gen. Dodge very well by reputation.

Q. Were Waterhouse & Co. or Frank Waterhouse advertising the sale of the steamship "Garonne" at that time?

A. They were advertising it as agents, giving the date in the local papers that the steamship "Garonne" would sail on the 2d of June, and soliciting freight and passenger business, and signing the advertised article "North Alaska Steamship Company, per Frank Waterhouse & Company, Agents."

Q. Do you recall whether there was anything after "North Alaska Steamship Company" in the advertisement?

A. Yes; I recall this, that it was signed by Frank Waterhouse & Company, under "North Alaska Steamship Company."

Q. Anything else?

(Deposition of Frank S. Pusey.)

A. The heading was the "Steamship Garonne," but it was signed "North Alaska Steamship Company, per Frank Waterhouse & Company, Agents" in one of the local papers.

Q. What else, if anything, did you say to Frank Waterhouse in regard to your business out there in Seattle?

A. I told him that my object in getting there before the 2d of June was to have a settlement of Gen. Dodge's claim, and that if I did not get a settlement satisfactorily, I would attach the ship and garnishee the freight moneys.

Q. After you had this conversation with Frank Waterhouse, did you see the steamship "Garonne"?

A. Yes, sir; Mr. Waterhouse in our conversation had said that the steamship had been thoroughly overhauled and had been in drydock and painted up and fitted for the voyage, and that it was at the dock and that he would be glad to take me down and look it over.

Q. Did you go with him?

A. I did; and we went over the ship very thoroughly. She was coaling up at the time; her decks were covered with canvas to protect her from the dust, and she seemed to be in prime condition in every way inside and out; and I noticed that the

(Deposition of Frank S. Pusey.)

staterooms were being fitted up with new bedding, such as mattresses, and so forth.

Q. Did Mr. Waterhouse make any remarks at all in regard to the condition of the boat at that time?

A. Yes, sir; he said that she was in perfect condition for the trip; that they had spent a good deal of money on her, and that he considered her the best ship afloat between Seattle and Nome.

Q. When did Charles B. Smith, President of the North Alaska Steamship Company, arrive out in Seattle?

A. He arrived in Seattle on Sunday, the 31st of May, 1904, Sunday morning.

Q. You saw him after he arrived?

A. Yes, sir; I called on him at his hotel.

Q. Did you and Mr. Smith and Frank Waterhouse meet and have a talk in regard to the situation?

A. Yes, sir, on the following day, Monday.

Q. Where did that occur?

A. Mr. Smith and I went to Mr. Waterhouse's office, and we went over the situation, the three of us, together, chiefly looking into the question of the freight moneys and passenger list that was being booked for the "Garonne," and more particularly to see if we could arrive at an agreement wherein all three interests would be satisfied.

(Deposition of Frank S. Pusey.)

Q. You speak of three interests; you mean the amount due Waterhouse & Co. on the purchase price of the boat—

A. (Interrupting.) Yes, and the interest of the North Alaska Steamship Company and the interest of Gen. Grenville M. Dodge.

Q. That was on what date?

A. That was on Monday, the 1st of June, 1904.

Q. Was anything said at that meeting in regard to coming to any agreement?

A. Yes, sir; that afternoon we met Mr. Frank Waterhouse's attorney, and formulated terms of agreement; and Mr. Waterhouse's attorney took notes to have his stenographer prepare the papers to be signed the following day.

Q. Were the terms of the papers to be signed the following day discussed at that meeting?

A. Yes, fully.

Q. When did you see Mr. Waterhouse again?

A. On Tuesday morning I called at his office, and the papers were not ready, and we arranged to meet Tuesday afternoon at two or three o'clock; I do not recall the exact time.

Q. Did you meet at two or three o'clock on Tuesday?

(Deposition of Frank S. Pusey.)

A. Yes; on Tuesday, June 2d, in the afternoon we met and the papers were ready; and at that meeting were Frank Waterhouse and Mr. Charles B. Smith, Mr. Frank Waterhouse's attorney and myself, and at that time these papers were signed.

Q. (Papers shown witness.) I show you a paper and ask you what it is?

A. This is a promissory note for \$10,000, "North Alaska Steamship Company by Charles B. Smith, President," in favor of Frank Waterhouse & Company as trustee for Gen. Grenville M. Dodge.

Q. And that paper was signed and delivered at that meeting?

A. Yes, sir.

Mr. TAFT.—I offer this note in evidence.

(Marked "Complainant's Exhibit 2, Sept. 29, 1905.")

Q. (Paper shown witness.) I show you another paper and ask you what that is?

A. This is the agreement between myself as agent for Grenville M. Dodge and Frank Waterhouse & Company (Incorporated), by Frank Waterhouse, President, executed on the same date.

Q. At the same time?

A. Yes, sir, at the same meeting.

Q. And delivered at the same time?

(Deposition of Frank S. Pusey.)

A. Delivered at the same time.

Mr. TAFT.—I offer this paper in evidence.

(Marked “Complainant’s Exhibit 3, Sept. 29, 1905.”)

Q. (Paper shown witness.) I show you another paper and ask you what it is?

A. This is a copy of the contract entered into between Charles B. Smith, President of the North Alaska Steamship Company, and Frank Waterhouse & Co., whereby the indebtedness of Frank Waterhouse is set worth as \$37,671.46, and also the indebtedness of the North Alaska Steamship Company to Frank Waterhouse & Co., as Trustee for G. M. Dodge, to the amount of \$10,000.

Q. You speak of that as a copy of a contract. More accurately it is a copy of a mortgage, is it not?

A. It is a copy of the mortgage, the original of which I saw executed in the presence of Frank Waterhouse and his attorney.

Q. You saw the original executed? A. Yes.

Q. Where did you get that copy from?

A. This was handed to me by Mr. Waterhouse.

Q. When?

A. At the meeting, after the signatures were attached; it was turned over to me after the original was duly executed.

(Deposition of Frank S. Pusey.)

Q. As a correct copy of what had been executed?

A. Yes, as a correct copy of what had been executed.

Mr. TAFT.—I offer this paper in evidence.

(Marked “Complainant’s Exhibit 4-M, Sept. 29, 1905.”)

Q. Did Charles B. Smith, President of the North Alaska Steamship Company, also transfer to Frank Waterhouse & Co., as Trustee, any of the freight moneys to be collected from the first voyage of the steamship “Garonne”?

A. Yes, sir.

Q. Were any of these freight moneys ever paid to Gen. Dodge or to you as agent for Gen. Dodge, from Frank Waterhouse & Co.?

A. No, sir.

Q. Nothing was ever received by either of you from that source?

A. No, sir.

Q. After these papers had been executed, which you have testified to, did you then leave Seattle?

A. After they were executed I said to Waterhouse that afternoon that now that I had seen the steamship and this agreement had been entered into whereby our interests were protected by first and second mortgage, that if there should be any difficulty about the payment of that mortgage, I stood ready for Gen. Dodge to co-operate with Frank Waterhouse & Co. in purchasing and protecting our individual claims under our mortgage rights.

(Deposition of Frank S. Pusey.)

Q. You speak of a first and second mortgage. There was only one mortgage executed; isn't that so?

A. There was one mortgage in which the priority was given to Frank Waterhouse & Co., but that the second mortgage was embodied in the first mortgage as a part of the same.

Q. That more fully appears by the terms of the mortgage itself? A. Yes.

Q. When you say "in accordance with your rights under the mortgage," what do you refer to there by your mortgage rights?

A. That we were then at the time I was speaking of secured by a mortgage for Gen. G. M. Dodge's individual claims.

Q. Do you mean in case of foreclosure and sale under the mortgage?

A. In case of foreclosure, naturally, if they failed to comply with the terms of the agreement.

Q. Then it was the understanding that Frank Waterhouse & Co. would join in the purchase of the vessel to protect your joint interests?

A. Yes. I would say in that connection that I felt at the time personally willing to assume the full amount, if necessary, in order to protect Gen. Dodge's claim.

(Deposition of Frank S. Pusey.)

Q. Did you explain to Mr. Waterhouse anything about the financial ability of Gen. Dodge to do this?

A. Yes, sir; I told him that he was fully able to handle a proposition of this kind; that it was certainly far less an undertaking than he had been in the habit of handling.

Q. Now, Mr. Pusey, was there any other conversation with Frank Waterhouse in which Mr. Waterhouse said anything to show that he knew where Gen. Dodge's office was in New York, and, if so, what was that?

A. After closing up this affair satisfactorily to myself, at least, he stated that he was interested in a proposition that had been submitted to him for the purchase of a couple of steamers that were at that time at Toledo, Ohio, which he wished to have brought about and put into service on Puget Sound, and that he considered it a very flattering proposition, and would like to interest me in the same, provided I could interest capital in New York City to join with us in the purchase of these two vessels. I told him then that, through my connection with Gen. Dodge and acquaintance in New York, it would be very likely that I could be of some assistance to him to that end; and he then and there said that he would be on to New York very soon, and would call on me at the office of Gen. Dodge at No. 1 Broadway,

(Deposition of Frank S. Pusey.)

which office, in the course of our conversation he demonstrated to me beyond all question of doubt that he knew its locality and would have no difficulty in finding either Gen. Dodge or myself at that address.

Q. Did he speak of knowing the building, No. 1 Broadway?

A. Yes, either he or I spoke of the location, of it being at Bowling Green and the Battery, overlooking New York Harbor.

Q. When did you leave Seattle?

A. I left Seattle the following morning, June 3d.

Q. After you left Seattle on June 3d, did you have any communication with Frank Waterhouse or Frank Waterhouse & Co., and, if so, when did you have it?

A. On my return to New York on the 14th of July, when I arrived, and on the following day, the 15th of July, I telegraphed Mr. Waterhouse to ascertain the present status of our joint claim, and to further ascertain whether he had in fact collected any freight moneys from the first voyage.

Q. (Paper shown witness.) I show you a paper and ask you whether that is a copy of a telegram that you sent to Frank Waterhouse?

A. Yes, sir.

(Deposition of Frank S. Pusey.)

Mr. TAFT.—I offer this telegram in evidence.

(Marked “Complainant’s Exhibit 5, Sept. 29, 1905.”)

Q. Did you get any reply to that telegram?

A. No, sir.

Q. What was your first communication to Mr. Waterhouse?

A. I would like to explain my answer to your first question. I did not get a reply to it, and for that reason I sent an inquiry to Seattle to see whether it had been delivered; and I got a statement from the agent of the Western Union at Seattle that it had been received and signed by Waterhouse.

Q. You do not know whether that was Waterhouse’s signature, or the signature of a clerk?

A. No, I do not; I only give it as it says here.

Q. When was your next communication to Frank Waterhouse?

A. On the 27th of July, 1904, I wrote him a letter.

Q. (Paper shown witness.) Is that a copy of the letter that you wrote him? A. Yes, sir.

Mr. TAFT.—I offer this letter in evidence.

(Marked “Complainant’s Exhibit 6, Sept. 29, 1905.”)

(Deposition of Frank S. Pusey.)

Q. In this letter of July 27th, you say: "I learn through Mr. King that you have disposed of the steamship Garonne to a new company." What Mr. King is that?

A. Mr. W. F. King, of Calhoun, Robbins & Company.

Q. The same Mr. King who was referred to in Gen. Dodge's testimony of yesterday?

A. Yes, sir.

Q. When did you receive this word from Mr. King that Frank Waterhouse had disposed of the steamship "Garonne" to a new company?

A. Probably that day, or the day prior to the writing of the letter.

Q. Had you or Gen. Dodge any knowledge whatsoever of any sale of the steamship "Garonne" to a company other than the North Alaska Steamship Company up to on or about July 26th, 1904, say?

A. I had no direct knowledge of that fact at that date. The first rumor I heard of it was through Mr. Leak of the North Alaska Steamship Company, who stated that Mr. King had, with his associates, purchased the steamship and all the rights of the North Alaska Steamship Company therein. So that the matter of a day or two possibly may have intervened prior to my sending this letter, as I wished

(Deposition of Frank S. Pusey.)

to ascertain all the facts in the matter before writing Mr. Waterhouse.

Q. General Dodge, in his testimony yesterday, said that he learned of this new transfer of the steamship "Garonne" to Mr. King's company from you in July. Can you specify the date on which you told Gen. Dodge of what you had learned?

A. I should say about anywhere from the 25th to the 27th of July.

Q. It was not prior to the 25th?

A. I should say not.

Q. Did you see Mr. King in regard to his having purchased the steamship "Garonne"?

A. Yes, sir.

Q. When did you see him?

A. When I learned from Mr. Leak that Mr. King had made this purchase, I called on Mr. King, as I knew him personally and had for a number of years; and I got the information direct from him that he had formed a new company and purchased the steamer and had absolute control of the various sub-companies, including the North Alaska Steamship Company.

Q. When did you first hear from Frank Waterhouse & Co. after June 2d, 1904?

(Deposition of Frank S. Pusey.)

A. The first communication came to me about the 19th of August, 1904; I think his letter was of that date; it arrived here six days later.

Q. So you would not have heard from him until somewhere around the 25th of August, the letter itself being dated the 19th? A. No.

Q. And that was the first communication that you had from Frank Waterhouse?

A. Yes, sir.

Q. After leaving him on June 2d, 1904?

A. Yes, sir.

Q. The letter of August 19th from Waterhouse & Co. was the first notice you received from them as to the subsequent sale of the "Garonne" to the Merchants' and Miners' Steamship Company?

A. Yes, sir.

Q. Do you know when the Merchants' and Miners' Steamship Company was incorporated?

A. I saw a paper with a notice of the incorporation on the 12th of July, I think it was.

Mr. TAFT.—I offer in evidence a letter from the Secretary of State the State of New York stating that the Merchants' and Miners' Steamship Company had filed their articles of incorporation in his office on the 12th day of July, 1904.

(Deposition of Frank S. Pusey.)

(Marked "Complainant's Exhibit 7, Sept. 29, 1905.")

Q. I see among the incorporators mentioned here is A. J. Baldwin. Do you know who A. J. Baldwin is?

A. Arthur J. Baldwin, yes, sir; I am personally acquainted with him.

Q. What is he, a lawyer?

A. Yes, sir, an attorney.

Q. Do you know his firm?

A. Griggs, Baldwin & Baldwin, I believe now.

Q. And they are the attorneys who represent Frank Waterhouse and Frank Waterhouse & Company, Incorporated, on the taking of these depositions?

A. I so understand.

Q. How long have you known Mr. A. J. Baldwin?

A. I met Mr. Baldwin in 1902; we sailed on the same steamer, January 4th, for Havana, Cuba, and occupied the same stateroom.

Q. Have you examined the Trow City Directory for 1904?

A. Yes, sir.

Q. To see whether you appear in that directory?

A. Yes, sir.

Q. What did you find?

A. I found my name appearing there as "Frank S. Pusey, Broker, Room 218, No. 1 Broadway."

(Deposition of Frank S. Pusey.)

Q. Do you remember a conversation with Mr. Waterhouse about his attempting to call on Gen. Dodge with W. H. Ferguson?

A. Yes, sir; as I recall it, he said that he had been in New York at the same time with Mr. Ferguson—

Q. Give about the date.

A. During the spring of 1904, after negotiation had been entered into for the purchase of the steamer "Garonne."

Q. By what?

A. By the North Alaska Steamship Company and that he had intended to go down with Mr. Ferguson and meet Gen. Dodge, whom he knew as one of the backers of the North Alaska Steamship Company, and that he was too busily engaged with other matters to accompany Mr. Ferguson on that visit.

Q. When did Mr. Waterhouse tell you that?

A. While I was in Seattle in June, 1904.

Q. What was the date that Mr. Waterhouse referred to as being in New York and wishing to call?

A. He did not specify any date.

Q. Well, was that in the spring of the year, or when?

A. In the spring of the year 1904—the latter part of the winter, or early spring—some time after February.

(Deposition of Frank S. Pusey.)

Q. And prior to May 13th?

A. And prior to May 13th.

Cross-examination by Mr. DEAN.

Q. Did he, Mr. Waterhouse, give any reason why he was unable to see or find Mr. Dodge?

A. He said he was too busily engaged to accompany Mr. Ferguson.

Q. He spoke of the sum of \$1,500 being added or allowed by the president of the steamship company for expenses. Is that sum of \$1,500 any part of the ten thousand dollar note—does it go to make up the ten thousand dollar note?

A. It goes to make up the ten thousand dollar note.

Q. When was that allowance of \$1,500 fixed or agreed upon?

A. At my interview with Mr. Charles B. Smith in Seattle, as president of the steamship company, allowing it to me for costs and traveling expenses incurred incident to my going to Seattle to protect Gen. Dodge's claim. I should say that was about June 1st, 1904.

Q. How was the money paid by Gen. Dodge when he loaned them this money that you speak of, do you know?

(Deposition of Frank S. Pusey.)

A. By an individual endorsement with Mr. Smith for the loan of \$12,000 from the Bowling Green Trust Company.

Q. When was that?

A. The exact date I cannot give you, but it was in the spring of 1904, between February and May 13th.

Q. You mean that he endorsed a note with Mr. Smith at that time?

A. He signed, as I recall it, a note with him, and gave an individual check for \$1,500 some days later, bringing the sum up to \$13,500.

Q. So that \$13,500 is the sum total of all the moneys that he loaned the steamship company?

A. No, sir; he advanced—the exact amount I cannot state; he advanced money on gold dust or nuggets that were brought down from Alaska by one of the chief officers or managers of the North Alaska Steamship Company, Mr. Rowe.

Q. Was that a loan of money to the Steamship Company, or an individual transaction?

A. No; that was for the benefit of the Steamship Company, as they required the funds.

Q. Do you know how that money was paid, how it was advanced, whether by check or draft or how?

A. I do not know; probably by check; that was the custom.

(Deposition of Frank S. Pusey.)

Q. Do you know how Gen. Dodge paid the note which he signed or indorsed?

A. No, I do not know.

Q. Do you know from what funds that twelve thousand dollar note which Gen. Dodge signed was paid?

A. I believe from his personal balance at that bank.

Q. That would hardly answer the question, perhaps?

A. I do not know positively from what fund it was paid.

Q. You spoke of some money being repaid to Gen. Dodge; what moneys do you know were repaid to Gen. Dodge?

A. I know that a five thousand dollar note of a Mrs. Ditmar, which was held as collateral, attached to the twelve thousand dollar note was paid to the Bowling Green Trust Company, and that sum of five thousand dollars was applied on the note of twelve thousand dollars.

Q. Do you know what the amount of the Ditmar note was when it was applied on this \$12,000 note?

A. Five thousand dollars even.

Q. And possibly some interest?

A. I think not.

(Deposition of Frank S. Pusey.)

Q. Do you know of any other collateral that was applied upon the twelve thousand dollar note?

A. There was none.

Q. The sum of \$1500 allowed for expenses was just an arbitrary sum which you and Mr. Smith agreed upon, was it not?

A. I do not understand the word "arbitrary" in that connection.

Q. You did not figure it up absolutely one way or the other, but simply said "We will call it so much?"

A. It was a final adjustment of moneys to cover the estimated costs, legal or traveling expenses, definitely fixed at \$1500.

Q. What had been your actual expenses, as nearly as you can tell, up to the time that sum was fixed upon?

A. My personal expenses?

Q. Well, your expenses in attempting to secure or collect the money?

A. I could not answer that definitely.

Q. I did not expect you could, but give it as nearly as you can?

A. I recall that I started out on that trip with \$500, and I had to draw on New York before I got back. I presume that the actual personal expenses that I was put to would be somewhere under \$500.

(Deposition of Frank S. Pusey.)

Q. You were about how long going there, five or six days?

A. I was six days, I believe.

Q. Continuously on the train?

A. Yes, except a short stop over at night at Portland.

Q. In fixing the sum of \$500, do you include anything for attorneys' fees? A. No, sir.

Q. Would you think on reflection that \$500—that it actually cost you \$500 to travel from New York to Seattle and remain there the time that you did?

A. Until my return to New York?

Q. How long were you in Seattle?

A. I presume five days—six on the outside; but I did not return on the trip until the 15th of July.

Q. Well, do you know what the fair actual expense of going to Seattle and remaining there five days and returning would be?

A. No, I do not.

Q. Living in Seattle—hotel expenses are about how much?

A. About four dollars a day.

Q. Well, \$4 or \$5 a day at least?

A. \$4 or \$5 a day, hotel expenses.

Q. And the railroad fare and ordinary expenses in traveling from New York to Seattle are about how much?

(Deposition of Frank S. Pusey.)

A. I really do not know; I should judge the railroad fare and Pullman and meals would be about \$100 each way.

Q. So that if you limited it to the ordinary necessary expenses to go there and remain the time you did, it would be nearer, say, \$250, would it not?

A. Probably, if I returned at once.

Q. What went to make up the balance of the \$1500?

A. The probability at that time of legal, attorney's fees and costs that would naturally result from legal steps to protect the interests of Gen. Dodge until the payment of his claim.

Q. The \$1500 was agreed upon before you had any talk with Mr. Waterhouse, was it not?

A. When we arrived at this understanding we had had our talk with Mr. Waterhouse and his attorney about how things were going to be shaped up that day.

Q. Then, at the time, or rather after you had a talk with Mr. Waterhouse and Mr. Smith and in a general way fixed upon how this money should be secured through Mr. Waterhouse, you then, after that, agreed with Mr. Smith upon this sum of \$1500?

A. We at that time agreed that \$1500 should be added to make up Gen. Dodge's claim to the amount of \$10,000.

(Deposition of Frank S. Pusey.)

Q. Was Mr. Waterhouse present when that talk was had?

A. When the sum total was agreed upon.

Q. Not the sum total, but was Mr. Waterhouse present when this talk of \$1500 was had?

A. I think not; I think it was prior to my personal interview with Mr. Smith.

Q. But I understand your evidence here is that the \$1500 was fixed upon after you had had an arrangement, or a tentative arrangement, if you please, with Mr. Waterhouse. Do you wish to correct that?

A. I wish to correct it to this extent, if I made that statement, that the \$1500 was agreed upon between Mr. Smith, as President of the North Alaska Steamship Company, and myself, prior to the signing and execution of the contract as between Frank Waterhouse & Co. and the North Alaska Steamship Company and also prior to the signing of the contracts between Frank Waterhouse and myself as trustee for Grenville M. Dodge.

Q. The written agreements referred to in your last answer were but the completion of a prior oral arrangement which you had with Mr. Waterhouse and Mr. Smith, were they not? A. Yes, sir.

Q. And was the \$1500 expenses which you speak of fixed and agreed upon after that oral arrangement and prior to the execution of the written agreements?

(Deposition of Frank S. Pusey.)

A. Prior to the oral arrangement between myself and Mr. Smith to cover any possible legal expenses.

Q. I understood by your last answer that you fixed the time of fixing the \$1500 as prior to the written agreements. Now you place it prior to any oral talk whatever in regard to it with Mr. Waterhouse, do you? A. To any oral—

Q. (Interrupting)—arrangement with Mr. Waterhouse?

A. I think the same day, after calling on Mr. Waterhouse, that on that day, Monday, I saw Mr. Smith and agreed that the legal costs would probably amount to that.

Q. What I desire, Mr. Pusey, is to place upon the record, as you desire it, just what the fact is?

A. Yes.

Q. Now, we have it upon the record that the \$1500 was agreed upon prior to the execution of the written agreements. A. Yes.

Q. Now, we also have upon the record that there were oral arrangements made between you and Mr. Waterhouse for the written agreements, before the written agreements were actually made. Now, please place upon the record as you understand it from your best knowledge whether the agreement upon \$1500 for expenses was made before the oral arrangements you had with Mr. Waterhouse?

(Deposition of Frank S. Pusey.)

A. I believe that same day, Monday, I had talked with Mr. Waterhouse and Mr. Smith both on that day. I did not discuss the subject, the item of \$1500 with Mr. Waterhouse; that was entirely arranged with Mr. Smith to cover any possible fees which, I wish to say, were in addition to expenses, which you put in your question—I saw the possibility of legal expenses.

(By Mr. TAFT.)

Q. Was there any question of any interest in the old indebtedness included in the \$1500?

A. It covered everything.

Q. The only point I am making is this: Mr. Dean is now trying to find out what that \$1500 was to include. Was there any interest item on the prior indebtedness of \$12,000 and \$1500 included in the item of \$1500 agreed upon between you and Mr. Smith at Seattle?

A. Not specifically, but generally covering all costs that had accrued in the transaction or to accrue in the transaction, were covered by this \$1500:

Q. And one of the items of that was interest, was it?

A. I do not think it was specified, as I remember it, although I was aware of the fact that there was a long lapse of time there.

(Deposition of Frank S. Pusey.)

(By Mr. DEAN.)

Q. Now, you say you had the talk with Mr. Smith about the \$1500 not in the presence of Mr. Waterhouse; Mr. Waterhouse knew nothing about that?

A. Not to my knowledge.

Q. Now you say it occurred on the same day?

A. Or the previous day—Sunday or Monday—I am not positive of the date.

Q. When you had the oral talk with Mr. Waterhouse, you talked it all over, so that when the writings were executed, they were simply to carry out the oral talk, were they not?

A. Yes, sir, the oral talk that I had with him.

Q. Somewhere you spoke of some one taking notes from which they could draw the written agreement?

A. Yes, sir, the attorney for Mr. Waterhouse.

Q. (Exhibits handed witness.) Will you please select out which contract or agreement it was that was prepared from the notes which the attorney took?

A. This is the one (referring to Complainant's Exhibit 4) and this is also one (referring to Complainant's Exhibit 3) and this is one also, prepared by the same attorney (referring to Complainant's Exhibit 2).

Q. Then, Complainant's Exhibits 2, 3, and 4, which I now show you, were prepared by the at-

(Deposition of Frank S. Pusey.)

torneys from notes which they took at the time referred to in your direct examination when you say the attorneys took notes from which they prepared the contracts; is that right?

A. The attorney being present, I presume he took notes; I would not swear that he took them. The conditions and terms were talked over and discussed with him, and I presume he took the notes down.

Q. Well, the attorney learned when present at that conference with you and Mr. Waterhouse that the amount was \$10,000 did he not?

A. Yes, sir.

Q. After that conference, you did not see the attorney until the agreements were prepared, did you? A. No, sir.

Q. So that whatever information you gave him in regard to the amount was given at that conference?

A. Yes, sir, as to \$10,000 being the amount of the claims due Gen. Dodge.

Q. Did you have more than one conference with Mr. Waterhouse when the attorney was present?

A. The attorney was present at the next meeting when the papers were executed.

Q. What attorney was it that was present who you assumed took notes?

(Deposition of Frank S. Pusey.)

A. His name I cannot give you; he was introduced to me as the attorney for Mr. Frank Waterhouse by Mr. Frank Waterhouse.

Q. Where was that?

A. In Mr. Frank Waterhouse's private office.

Q. And was it in Mr. Frank Waterhouse's private office that you had the oral talks prior to the written agreement? A. Yes, sir.

Q. On all occasions the talk was in Mr. Frank Waterhouse's office? A. Yes, sir.

Q. Can you tell whether the \$1500 was fixed upon before you had any talk with Mr. Waterhouse whatever about securing your claim or helping you to secure it, or afterwards?

A. I cannot say definitely my impression is it was the same day, Monday.

Q. That is as near as you can put it?

A. Yes, that is as near as I can put it.

Q. Whether it was before you had any talk with Mr. Waterhouse or whether it was fixed upon afterwards, you cannot state positively?

A. I could not say positively—now that it is called to my attention I remember I called upon Mr. Waterhouse before Mr. Smith arrived.

Q. You saw Mr. Waterhouse on Saturday when you arrived in Seattle did you not?

A. On Friday when I arrived in Seattle.

(Deposition of Frank S. Pusey.)

Q. Before Mr. Smith ever came there, did you talk with him and have an oral arrangement with him that he would execute these written agreements?

A. I called on him and had an interview with him and talked over the situation.

Q. When did he agree with you orally that he would make these agreements which were afterwards written out?

A. On Monday afternoon the terms were talked over and were to be presented the following day and executed if found satisfactory.

Q. On Monday afternoon, June 1st, you talked over and agreed upon what the written agreement should be, did you not? A. Yes, sir.

Q. Now, at that time, had you seen Mr. Smith?

A. Oh, yes, the day before, Sunday, at his hotel.

Q. And on Saturday before that Monday had Mr. Waterhouse assented to your proposition to secure or help secure your debt? A. No, sir.

Q. The \$5000 which Mr. Smith assigned to Mr. Waterhouse as trustee was assigned by an instrument in writing, was it not?

A. Yes, of the freight moneys to be collected by Mr. Smith for Frank Waterhouse, trustee.

Q. That was done by some writing, was it not?

A. Yes.

(Deposition of Frank S. Pusey.)

Q. (Paper shown witness.) And is this the writing, this paper which I show you?

A. Yes, sir, that is it.

(The written assignment referred to by the witness is marked "For Identification, Defendants' Exhibit A.")

Q. How did you come in possession of this written assignment of the \$5000 freight money?

A. Mr. Frank Waterhouse enclosed this paper with the other papers, including the \$10,000 note in his letter dated August 19th.

Q. When you went to Seattle, did you have the notes from the bank and the vouchers which showed what this debt was—did you take them with you to Seattle? A. No, sir.

Q. Did you have a statement of the amount of the claim due?

A. I had a verbal statement made by an officer of the bank.

Q. What was the amount that you learned when you went there you were to secure as actually due the bank?

A. \$12,000 with accumulated interest.

Q. How did it ever come down to \$10,000—I mean at the time you went to Seattle?

(Deposition of Frank S. Pusey.)

A. On June 1st, 1904, I received a telegram from the Bowling Green Trust Company that the \$5000 had been paid and applied on the indebtedness.

Q. And before you started to Seattle you were informed that there was just \$12,000 due?

A. At the bank, yes.

Q. So that on receipt of that telegram you understood there was just \$7,000 left due to the bank?

A. Due to the bank, and interest.

Q. Do you know how much the interest was?

A. No, sir.

Q. When was the note for \$12,000 signed by Gen. Dodge?

A. On the 15th of February, 1904.

Q. Now, let me ask you this: When you started for Seattle you knew that there were \$12,000 principal with interest from the date of the twelve thousand dollar note in February, 1904, due to Gen. Dodge?

A. Yes, sir; the date I did not know at that time.

Q. Well, from February—you knew it was in February, did you not? A. Yes.

Q. And, as soon as you got there, on June 1st, at least, you learned by telegraph that \$5,000 had been paid on that note? A. Yes, sir.

Q. Did you compute the interest to see what the

(Deposition of Frank S. Pusey.)

true amount of principal and interest was on the \$12,000 note after crediting the \$5,000?

A. No, sir.

Q. The balance due on the twelve thousand dollar note, after crediting the \$5,000, was all the money that was owing Gen. Dodge at that time, was it?

A. No, sir.

Q. What other moneys did you know of?

A. The check for \$1,500 I knew of that he had personally given.

Q. When was that given?

A. Between February 15th and May 13th.

Q. There was in addition to the twelve thousand dollar note and interest, a check for \$1,500?

A. Yes, sir, making it \$13,500.

Q. Which you knew of?

A. Yes, sir, bringing up the amount to \$13,500.

Q. Do you know where that check for \$1,500 was paid?

A. I do not know positively on what bank.

Q. I mean by whom was it drawn?

A. All I can give is what I have been told; this \$1,500 was applied to making up the payment to Waterhouse on the ship.

Q. Was the \$1,500 check given to Waterhouse?

A. No; it was given to the North Alaska Steamship Company, through the president, Charles B. Smith.

(Deposition of Frank S. Pusey.)

Q. Did you ever see that check or draw it, or have any connection with it?

A. No, sir, not that I recall; I recall only that Gen. Dodge told me he had given it.

Q. Was that part of the debt that he requested you to secure? A. Yes, sir.

Q. And you added to that the lump sum of \$1,500 by agreement with Mr. Smith?

A. Yes, sir, to cover any contingent fees that might occur and had occurred.

Redirect Examination by Mr. TAFT.

Q. When you arrived in Seattle on May 29th, there was due to Gen. Dodge in cash \$12,000 on his note to the Bowling Green Trust Company, and \$1,500, being a check given to the North Alaska Steamship Company as part payment for the steamship "Garonne," making in all \$13,500?

A. Yes, sir.

Q. And on June 1st there was credited on the note of \$12,000 a payment of \$5,000?

A. Yes, sir.

Q. Leaving a balance then due to Gen. Dodge of \$8,500 plus interest and incidental expenses?

A. Yes, sir.

Q. And you agreed with Mr. Smith that the interest and these incidental expenses would amount to \$1,500? A. Yes, sir.

(Deposition of Frank S. Pusey.)

Q. Making a total of \$10,000 for which the note was given? A. Yes, sir.

Q. Now, this note for \$12,000 I notice is dated February 15th, 1904. Do you recall the necessity of the North Alaska Steamship Company having that amount of money on that date? A. Yes, sir.

Q. What was it?

A. Under the terms of the telegram sent by Mr. Waterhouse to the North Alaska Steamship Company \$1,000 had been paid and \$14,000 was to be paid.

Q. On what date?

A. The exact date I cannot give.

Q. Well, was it February 15th?

A. Yes, and for this purpose the money was raised from Gen. Dodge, this \$12,000.

Q. In order to make the payment of \$14,000 on account of the purchase of the Steamship "Garonne" on February 15th? A. Yes, sir.

Q. Now, in your testimony in regard to the items that go in to make up the \$1500, you have not included your own personal services in the matter?

A. No, sir; I said to Smith at the time, covering all legal fees and personal expenses and services on my part.

Q. How much time did you devote to going out to Seattle and returning in connection with this business,—in round numbers, how many days?

(Deposition of Frank S. Pusey.)

A. I presume five or ten days prior to the signing of this original agreement; on May 13th I took hold of the matter and gave it my constant attention, and, through my personal efforts, secured the acknowledgement of the debts on the part of the North Alaska Steamship Company to Gen. Dodge, prior to my going to Seattle.

Q. That is secured by this agreement by which they agree to give you a second mortgage?

A. Yes, sir, and they acknowledged it as a company debt.

Recross-examination by Mr. DEAN.

Q. In regard to the check for \$1500, you never saw the check and your knowledge of it is simply what Gen. Dodge told you, as I understand you?

A. I may have seen the check.

Q. But you have no recollection of it?

A. I do not recall—for instance, I could not swear that I saw it.

Q. So that your knowledge in regard to it is simply what Gen. Dodge told you?

A. I am inclined to think that he showed me the check, but I could not say but what it was on his personal statement.

Q. Do you know to whom the check was made payable?

(Deposition of Frank S. Pusey.)

A. I believe to Charles B. Smith.

Q. But you would not undertake to be positive about that?

A. I would not be positive about it.

Q. What knowledge have you that the money that Gen. Dodge advanced was actually applied towards the purchase price of the ship?

A. On the actual statement made to me by Charles B. Smith that all these moneys were applied on the purchase of the ship.

Q. And that is the only knowledge you have of that, is it not?

A. That is the only knowledge I recall at the moment.

Q. You say now you spent several days in getting them to acknowledge this debt to be a debt of the company; where was that done, here in New York?

A. In New York, I brought about this agreement in which is embodied the acknowledgment on their part that it is a company debt.

Q. Well, what question was there ever about its not being a company debt?

A. There was no question about it, but no written evidence.

Q. Whom did you get to acknowledge it was a company debt?

(Deposition of Frank S. Pusey.)

A. The officers of the North Alaska Steamship Company.

Q. Who were they?

A. Mr. Charles B. Smith, President and Mr. Leak.

Q. What office did Mr. Leak hold?

A. Secretary and Treasurer, I believe, and some other officers that were present in the room that I did not know personally. These two men I knew personally.

Q. You know of no meeting of the directors or resolution or anything of that sort, do you, to that effect?

A. Not to my knowledge, except on the part of the attorneys for the company and their statements that this was all done in correct form—McKee & Frost.

Q. McKee & Frost—were they in New York?

A. Yes.

Q. Before you started to Seattle?

A. Yes, that was the 13th of May, 1904.

Q. Now, before you got the acknowledgment that it was the debt of the company, you had nothing to show that it was anything but an individual debt of Mr. Charles B. Smith, did you?

A. I had the personal statements of the officers that it was acknowledged as a debt of the company.

(Deposition of Frank S. Pusey.)

Q. Yes, but I say before you got that acknowledgment from them?

A. I had verbal acknowledgments of the debt from the officers prior to that.

Q. But the note itself which Gen. Dodge endorsed was an individual note of Charles B. Smith, was it not? A. Yes.

Q. And the collateral that was put up, the Ditmar note, was that an individual note of Ditmar, payable to Charles B. Smith individually?

A. Payable to him, I believe, as President of the Steamship Company for stock that Mrs. Ditmar had subscribed for.

Q. Well, do you remember that as a fact?

A. Yes, I remember that—Mr. Smith told me.

Q. Do you know it in any way except that Mr. Smith told you that it was payable to him as President of the company?

A. My recollection is that I saw the note; I did get the note; the note was turned over to me, and my recollection is that it was made to Mr. Smith as President of the steamship company; that is my recollection.

Q. Who turned the note over to you?

A. Mr. Charles B. Smith.

Q. Where?

(Deposition of Frank S. Pusey.)

A. At the office of Gen. Dodge.

Q. When?

A. Prior to my going to Seattle.

Q. And did you take it to Seattle with you?

A. — between the 13th of May and my departure for Seattle.

Q. And did you take it to Seattle with you?

A. No, sir; I took it to the Bowling Green Trust Company for collection, subject to protest.

Q. And you put it there as collateral security?

A. Yes.

Q. So that that note was given by Mr. Smith after Gen. Dodge had signed the \$12,000 note?

A. Yes, sir, after I had taken hold of the matter; that was part of my services in this matter; I secured this additional collateral.

Q. What became of that note? Was it returned to Mrs. Ditmar?

A. I do not know; it was paid I know by the North Alaska Steamship Company.

Q. Can you tell who the maker of that note was?

A. Mrs. Ditmar; her initials I do not recall.

A. She lived in New York.

A. She lived in New York?

Q. I think you have spread upon the record the fact that your best recollection is that it was to him

(Deposition of Frank S. Pusey.)

as President of the North Alaska Steamship Company? A. Yes.

Q. But you cannot be positive on that subject?

A. As nearly as I can be without seeing the note.

Q. Then Mr. Charles B. Smith finally agreed to allow you \$1500 expenses, a part of which was to pay you for time spent in getting him and his associate officers to admit that it was a corporation debt of the Alaska Steamship Company and not his individual debt; is that a fact?

A. No, sir; that was not the understanding under which he granted the \$1500 at all.

Q. Did you take the time that you spent in getting him to make that admission into account in estimating the amount of your expenses?

A. I included simply my time.

Reredirect Examination by Mr. TAFT.

Q. Did the North Alaska Steamship Company ever notify you or Gen. Dodge after June 2d that they had returned the steamship "Garonne" to Waterhouse & Co? A. No, sir.

Q. And the information that you got with regard to the subsequent sale to the Merchants' & Miners' Steamship Company was obtained by casually meeting Mr. Leak on the street, or how?

(Deposition of Frank S. Pusey.)

A. And by going to his office; I went to inquire about the condition of the matters and whether he had heard from Mr. Smith; and he incidentally said at that time that Mr. King had taken the matter in hand and had now purchased the "Garonne."

Q. Do you know whether the original contract of sale by Waterhouse & Co. of the steamship "Garonne," on or about February 3d, 1904, was with Charles B. Smith or with the Alaska Steamship Company direct"?"

A. With the Alaska Steamship Company direct—he as one of the officers—the contract was not with Smith personally but between the steamship company and Waterhouse.

Q. Was that the form of the original contract?

A. I do not know; I did not see the original contract.

Q. Who made the sale in the city of New York?

A. Frank Waterhouse & Co. made the sale.

Q. But who was the broker, the man in between?

A. I do not know.

Q. Was it Mr. Ferguson?

A. I do not know; that was prior to my knowledge.

(By Mr. DEAN.) Q. Do you wish to correct your answer to the question "Do you know whether

(Deposition of Frank S. Pusey.)

the original sale by Waterhouse & Co. was to Charles B. Smith personally or with the Alaska Steamship Company direct?"

A. I do not know the direct principals in the sale by Waterhouse or to whom, at that time.

Q. Then you do not wish to go upon the record as saying that you know that the original sale by Waterhouse & Company was to the Alaska Steamship Company, do you?

A. I do not know; I am not familiar with the original contracts drawn up in connection with the sale, as to who the parties were.

Q. I asked you if you wish to correct your answer to Mr. Taft's question, which I repeated in my question.

A. Yes, sir, by correcting it in this way, by saying that I do not know.

(By Mr. TAFT.) Q. This agreement of May 13th 1904, marked "Complainant's Exhibit 1, Sept. 29, 1905" sets forth the transactions with Gen. Dodge, by which it shows that he endorsed a note for \$12,000, and that the \$12,000 went in part payment of the steamship "Garonne," and also a check for \$1500, which \$1500 was applied as part payment of the balance due on said steamship "Garonne." Are

(Deposition of Frank S. Pusey.)

those statements in that agreement correct statements? A. Yes, they are.

(By Mr. DEAN.) Q. Do you mean to say that you know as a matter of fact that the money was actually paid for the purchase price of the steamship "Garonne"? A. Yes, sir.

Q. Was it not money which Mr. Charles B. Smith used to pay for his stock in the Alaska Steamship Company?

A. No, sir; he told me that all the money raised from Gen. Dodge was applied on the purchase payments to Frank Waterhouse & Co.

Q. That is, the only knowledge you have is what Mr. Smith told you, is it not?

A. And the agreement.

Q. Well, they agreed to that?

A. That admits it.

Q. But you do not know whether that is the actual fact or not, do you?

A. I did not see the transactions.

Q. In fact, it took you something like ten days to get them to admit it, did it not? A. No, sir.

Q. Did they admit it right from the very start?

A. They admitted it from the start, the officers did.

(Deposition of Frank S. Pusey.)

Q. But you only know that to be a fact from the admissions in the writing and from what Charles B. Smith told you?

A. And from their statements to me and from certain officers of the steamship company.

Q. What officers?

A. Mr. Smith and Mr. Leak.

(By Mr. TAFT.) Q. And Mr. Rowe?

A. I cannot swear that he made the statements; those two men made the statements. I had interviews with other officers of the company there, but I did not know them personally; I just met them incidentally that day. They knew of this indebtedness.

(By Mr. DEAN.) Q. What you desire to put upon the record, then, is that your knowledge that the money furnished by Gen. Dodge went to pay for the steamship "Garonne" is what is stated in this writing (Complainant's Exhibit 1) and what Charles B. Smith and Mr. Leak admitted to you or told you?

A. Yes, sir.

(By Mr. TAFT.) Q. You saw the officers of the North Alaska Steamship Company at the office of the company in the early part of May, 1904?

A. Yes, sir.

(Deposition of Frank S. Pusey.)

Q. Was any objection raised by any officer or any person connected with the steamship company that this money, \$13,500, about which you have been testifying, was not used in the purchase of the steamship "Garonne"?

A. No, sir.

Q. And you were present when negotiations about this agreement of May 13th, Complainant's Exhibit 1, was being prepared. Was there in those negotiations any questions raised at any time that these moneys were not due Gen. Dodge from the North Alaska Steamship Company and had not gone into the purchase price of the steamship "Garonne"?

Mr. DEAN.—I object to the form of the question upon the ground that it calls for a conclusion, and that the witness should state what was said upon the subject.

A. No, sir; on the contrary it was admitted as a company debt.

FRANK S. PUSEY.

Subscribed and sworn to before me this 3d day of September, 1905.

WILLIS VAN VALKENBURG,

Notary Public, Kings Co., Cert. filed in N. Y. Co.

Special Examiner.

Adjourned by consent of counsel to Saturday, September 30th, 1905, at 11 o'clock A. M. for reading and signing the testimony.

*In the Circuit Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Inc. (a Corpora-
tion), and FRANK WATERHOUSE,

Defendants.

Certificate of Special Examiner.

I, Willis Van Valkenburg, special examiner, named in the annexed order, do hereby certify that on the 21st day of September, 1905, at the city of New York, state of New York, I was attended by counsel for the complainant and for the defendants, and that upon the subsequent dates shown by the record herewith returned, I was attended by General Grenville M. Dodge and Frank S. Pusey, as witnesses, who were by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the within entitled cause, and gave their testimony, which by consent of counsel and by the respective parties was taken down stenographically in the presence of the witnesses and from their statements, and

that said stenographic notes were afterward reduced to writing by a typewriter, and the testimony as extended was thereafter read over, corrected and signed by said witnesses, respectively. That I herewith return such testimony duly certified to by me, together with seven exhibits offered by the complainant and one exhibit for identification offered by the defendant.

In witness whereof, I have hereunto set my hand and seal this second day of October, 1905.

[Seal] WILLIS VAN VALKENBURG,
Notary Public, Kings Co., Cert. filed in N. Y. Co.
Special Examiner.

[Endorsed]: Depositions. Filed in the U. S. Circuit Court, Western Dist. of Washington. June 21, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

Complainant's Exhibit No. 1.

(Sept 29/05. Willis Van Valkenburg, Special Examiner.)

This agreement, made this 13th day of May, 1904, between Charles B. Smith, of the City, County and State of New York, first party, the North-Alaska Steamship Company, incorporated under the laws of the State of New York, hereinafter called "the company," second party, and Frank S. Pusey, as trustee for Grenville M. Dodge, of the City, County and State of New York, third party, Witnesseth:

That whereas, the said Grenville M. Dodge, at the request of the said first party, and for his benefit, has heretofore endorsed a certain promissory note, dated February 15, 1904, made by said first party to the order of the Bowling Green Trust Company, for twelve thousand (\$12,000) dollars, payable ninety (90) days from said date, which note is due May 16, 1904, and

Whereas, the proceeds of the above-named note were applied by the said first party in part payment for the steamship "Garonne," now at Seattle, Washington, on a certain contract between Frank Waterhouse, of Seattle, Washington, individually and as president of Frank Waterhouse & Company, Limited, as the sole owner of record of said steamship, and the said first party, and

Whereas, the said contract was thereafter, on February 26, 1904, duly assigned to the North Alaska Steamship Company, the second party hereto, subject to the liability of the said first party to execute to the said Dodge a second mortgage on the above-named steamship, for twelve thousand (\$12,000) dollars, as security for the payment of the above-named note at maturity, with interest, costs and expenses, and

Whereas, the said Dodge loaned fifteen hundred (\$1,500) dollars to the said first party for days on March 17, 1904, which was paid by check of said Dodge dated that day, and

Whereas, that particular sum, so received from the said Dodge, was applied as part payment of the balance due on said steamship, and the benefit thereof received and accepted by said Company, and

Whereas, the said Company as assignee of said first party, is not able to deliver the second mortgage to said Dodge prior to the maturity of said above described note for Twelve thousand (\$12,000) dollars, for the reason that said Company has not obtained the title papers from said record owner, and

Whereas, the said Company is ready and willing to secure payment of the aforesaid amounts, with interest, costs and expenses, by an assignment of all the freight and passenger moneys now or hereafter due to the said Company as proceeds of the first and second round trips of the said steamship from Seattle, Washington, to Nome, Alaska, and return, in the coming season of 1904, except moneys pledged or assigned as follows:

Date.	Name.	Amount.	, ,Due.
March 21,	John Schick,	\$3,600.00,	June 20, 1904.
April 27,	Maria W. Dittmar,	6,000.00	June 1, 1904.
April 28.	Louis L. Browne,	6,000.00	On Demand.
May 7,	Louis L. Browne,	1,500.00	On Demand.
May 11,	S. C. Mead,	3,600.00	July 1, 1904.

Now, therefore, in consideration of the mutual promises herein contained and of other good and

valuable considerations, the parties hereto hereby agree as follows:

The said second party hereby agrees to execute to the said third party, as Trustee for the above-named Grenville M. Dodge, a second mortgage on said steamship "Garonne," for Twelve thousand (\$12,000) dollars, as soon as the title deed to the said steamship can be obtained from Frank Waterhouse & Company, Limited, the present record owner, pursuant to the contract of said Waterhouse, individually, and as President of Frank Waterhouse & Company, Limited, with Charles B. Smith, assigned to the above-named Company, present owners, as aforesaid.

The said second party further agrees to execute to the said third party its promissory note for Twelve thousand (\$12,000) dollars, payable days after May 16, 1904, as further security for the payment of the aforesaid note endorsed by said Dodge which is due May 16th, 1904, and as further security for the payment to said Dodge of the Fifteen Hundred (\$1,500) dollars loaned by him as aforesaid to the said first party, who applied such sum to the benefit of the said second party.

The said second party agreed to assign, transfer and set over to the said third party, as Trustee, and hereby does assign, transfer and set over all freight and passenger moneys, now or hereafter due the said

Company, or in the said Company's hands and collected by it as proceeds of the first and second round trips of the said steamship "Garonne" from Seattle, Washington, to Nome, Alaska, and return, in the coming season of 1904, except moneys pledged or assigned as above set forth, and to give the said third party an order on the said Company's agent at Seattle, Washington, for the payment of said moneys, as collected.

It is understood and agreed that the said Company shall pay any interest due on the said Fifteen (\$1,500) hundred dollars to date, or that may hereafter accrue, together with any interest due or that may hereafter accrue on said note for Twelve thousand (\$12,000) dollars, with costs and expenses.

It is further understood and agreed that if the said third party waives his right hereby created to collect any portion of said moneys out of the proceeds of the said first or second trips, then this agreement shall extend to and bind all the parties hereto as to subsequent trips of said steamship until said notes, with interest, costs and disbursements, are fully paid.

In witness whereof the parties hereto have hereunto affixed their hands and seals this 13th day of May, 1904, and the said Company has signed its name hereto by its President, attested by its Secre-

tary, and has affixed its corporate seal hereto on the same day.

CHARLES B. SMITH, [Seal]

NORTH-ALASKA STEAMSHIP CO.

[Seal]

By CHARLES B. SMITH, Pres.

Attest: JOHN B. LEAKE, Treas.

Complainant's Exhibit 2.

(Sept. 29/05. Willis Van Valkenberg, Special Examiner.)

\$10,000.00 Seattle, Wash., June 2d, 1904.

On or before two months after date we promise to pay to the order of Frank Waterhouse & Co. Inc. as Trustee the sum of Ten Thousand & 00/100 Dollars, with interest at the rate of seven per cent, per annum from date. Negotiable and payable at the Seattle National Bank, Seattle, Wash. If suit is brought on the note or it becomes advisable to place the same in the hands of an attorney for collection, we agree to pay an additional sum equal to five per cent upon the amount of this note as an attorneys fee.

NORTH-ALASKA STEAMSHIP CO.

By CHARLES B. SMITH,

President.

Complainant's Exhibit 3.

(Sept. 29/05. Willis Van Valkenberg, Special Examiner.)

Memorandum between Frank S. Pusey, agent for G. M. Dodge, of New York, and Frank Waterhouse & Co. Inc., of Seattle, Washington.

The North Alaska Steamship Company is indebted to said Waterhouse & Co. Inc. in the sum of about \$37,671.46 being balance due on purchase price of the Steamship "Garonne," and are also indebted to said G. M. Dodge in the sum of about Ten Thousand Dollars for borrowed money.

It is agreed that said Waterhouse & Co. Inc. shall take a mortgage from said North Alaska Steamship Co. upon the Steamship "Garonne" to secure both claims above mentioned. The claim of said Waterhouse & Co. Inc. shall be prior and paramount under such mortgage, and the claim of said Dodge shall be secondary. Said Waterhouse & Co. Inc. shall take a note from said North Alaska Steamship Co., payable to them as Trustee, for the amount so owing to said Dodge, said note to be payable in two months from date.

It is agreed that said Waterhouse & Co. Inc., in acting as such Trustee for said Dodge in the securing of said indebtedness, assumes no liability whatever

with reference thereto, except that it agrees to act in good faith.

FRANK S. PUSEY,

Agent For G. M. DODGE.

FRANK WATERHOUSE & CO., Inc.,

By FRANK WATERHOUSE,

President.

Complainant's Exhibit 4.

(Sept. 29/05. Willis Van Valkenberg, Special Examiner.)

To all to Whom these Presents Shall Come, Greeting:

Know ye, that we, North Alaska Steamship Company, a corporation, of the State of New York, are held and firmly bound unto Frank Waterhouse & Co. Inc., of Seattle, Washington, in the just and full sum of \$37,671.46 Dollars; for the payment of which sum, well and truly to be made, we hereby bind ourselves, our successors and assigns, by these presents.

Dated at Seattle, Wash., this 2d day of June, A. D. 1904. Whereas, said North Alaska Steamship Co. is justly indebted to said Frank Waterhouse & Co. Inc., for balance of purchase price of the Steamship hereinafter described in the sum of \$37,671.46 Dollars, evidenced by the two promissory notes of said North Alaska Steamship Co., payable in equal installments to said Frank Waterhouse & Co. Inc.,

for said last named sum, with interest at the rate of 7 per cent per annum from date until paid, said notes bearing even date herewith, and being payable June 22 and July 12, respectively, after date at Seattle National Bank, Seattle, Wash., and, whereas, said North Alaska Steamship Co., is further indebted to Frank Waterhouse & Co. Inc., as trustee in the sum of Ten Thousand Dollars, evidenced by its promissory note of even date herewith, payable two months after date to said Frank Waterhouse & Co. Inc., as trustee, at Seattle, Wash., with interest at the rate of 7 per cent per annum from date until paid; said sums being charged on the body, tackle, and appurtenances of the good ship "Garonne," of the burden of 2,319 tons, the said North Alaska Steamship Co. being the sole owner of said ship.

Now the condition of this obligation is, that if the said North Alaska Steamship Co. shall pay, or cause to be paid, to the said Frank Waterhouse & Co. Inc., the said sum of \$37,671.46 Dollars, evidenced by the notes above specified, and also to said Frank Waterhouse & Co. Inc., as trustee the said further sum of Ten Thousand Dollars, as evidenced as above stated, with interest on said sums according to the tenor of said notes, then this obligation to be void; otherwise; to be and remain in full force and effect.

And in consideration of, and as security for, said moneys so owing as aforesaid, the said ship "Ga-

ronne," her tackle, machinery, furniture, apparel and, equipment is; by these presents, assigned pledged, mortgaged, set over and conveyed to the said Frank Waterhouse & Co., Inc., its successors and assigns, the certificate of the registry of which ship is as follows, viz:

Register No. 108 Permanent	Official Number
	Numerals. Letters.
	86504 K. P. T. W.

Certificate of Registry.

In pursuance of Chapter I, Title XLVIII, "Regulation of Commerce and Navigation, "Revised Statutes of the United States, W. P. Prichard, Secy. of Frank Waterhouse Co. Inc., R. McFarland, Master, having taken and subscribed the oath required by law, and having sworn that he, The Frank Waterhouse & Company, Inc., is the only owner of the vessel called the "Garonne" of Seattle, Washington, whereof R. McFarland is at present master, and is a citizen of the United States, and that the said vessel was built in the year 1871, at Govan, Scotland, as appears by P. R. No. 48 B issued at Seattle, Washington, May 12th, 1900, surrendered O. C. and said register having certified that the said vessel has four decks, and three masts; and that her length is 371 feet and—tenths; her breadth 41 feet and 4 tenths; her depth 20 feet

and 4 tenths; her height 15 feet and 8 tenths; that she measures Twenty Three Hundred Nineteen.

	Tons	100ths.
Capacity under tonnage deck.....	1938	19
Capacity between decks above tonnage deck	1962	93
Capacity of inclosures on the upper deck, viz:	44	54
	Gross Tonnage....	3954

Deductions under Section 4153, Revised Statutes, as amended by Act of March 2, 1895:

Crew space 233.79; Master's cabin	233:79	
Steering gear; Anchor gear 46.62	117:74	
Boatswain's stores 71.12; Chart-house		
Storage of sails, 12.03;.....		
Donkey-engine and boiler; Propelling Power 1262.61	1274:64	
	Total Deductions	1626 17 1626 17
	Net Tonnage	2319

The following described spaces, and no others, have been omitted, viz: and that she is a Str. Sc (iron), has a figure-head and a elliptic stern; and the said having agreed to the descrip-

property in and to said ship, her tackle, apparel, furniture, machinery and equipment; and out of the proceeds of such foreclosure or of such sale, said Frank Waterhouse & Co., Inc., shall pay, first, all expenses connected with or incurred in such foreclosure or sale, including an attorney's fee of five per cent upon the amount then remaining unpaid on said notes for advice and services of their attorney in connection with such foreclosure or sale; second, the full amount then remaining unpaid on said notes of \$37,671.46, payable to said Frank Waterhouse & Co., Inc., if such proceeds shall be sufficient to pay said note in full, and if not sufficient to pay said note in full, then apply thereon all of such proceeds in their hands; and, third, after paying such expenses and the full amount due on said notes to Frank Waterhouse & Co., Inc., the residue, if any, or a sufficiency thereof, shall be applied in payment of such amount as may remain unpaid on said note for \$10,000.00 payable to Frank Waterhouse & Co., Inc., as trustee; and, fourth, any balance of such proceeds after making the payments above provided for shall be turned over to said North Alaska Steamship Company, its successors or assigns.

And before making such sale as aforesaid, said Frank Waterhouse & Co., Inc., shall give fifteen days' notice of the time, place and terms of said sale, such notice to be given by publication in some newspaper

published in Seattle, Wash., at least twice a week for two weeks. And it is expressly agreed and covenanted that said Frank Waterhouse & Co. Inc., may become bidders at such sale and may become purchasers thereat if they have the highest bid.

And it is further agreed that in case of such sale, said North Alaska Steamship Co., mortgagor, its successors and assigns, shall whenever thereto requested, make, execute and deliver to such purchaser or purchasers another bill of sale of said ship, her tackle, apparel, furniture, machinery and equipment, in which the registry of said ship shall be recited, for transferring completely to such purchaser or purchasers all the rights, interests, and claims of said mortgagor, its successors and assigns, as owners of said ship. And in default of the prompt execution and delivery of such other bill of sale to such purchaser or purchasers by the said mortgagor, its successors and assigns, when thereto requested, W. P. Prichard, of Seattle, Wash., is hereby constituted and appointed the legal attorney of the said North Alaska Steamship Co., mortgagor, for the purpose of making, executing and delivering such bill of sale; and the said North Alaska Steamship Co. hereby ratifies and confirms the act of the said W. P. Prichard, as their attorney for said purpose.

And it is hereby further agreed, that insurance shall be made at some agency in Seattle, Wash., on the said ship, her tackle, etc., for the security of the

said mortgagee, to an amount not less than the aggregate of said promissory notes as aforesaid, and said mortgagee is hereby authorized to procure such insurance at the expense of said mortgagor, if not seasonably obtained by said mortgagor, the amount so advanced by said mortgagee to be secured by this mortgage.

It is further agreed and understood that the said indebtedness evidenced by the said notes to Frank Waterhouse & Co. Inc., for \$37,671.46 shall be and is a first, prior and paramount claim secured by this mortgage, and the said indebtedness evidenced by said note to Frank Waterhouse & Co. Inc., as trustee for \$10,000.00, is a second claim and subordinate to said first described note under this mortgage. In testimony Whereof, The said North Alaska Steamship Company has hereunto set its hand and corporate seal, in execution hereof, by its president and secretary on this the Second day of June, A. D. 1904.

NORTH ALASKA STEAMSHIP COMPANY,

By _____,
President.

By _____,
Secretary.

Signed, sealed and delivered in presence of as to said _____

_____ as to said _____

State of Washington,
County of King,—ss.

I, _____, a Notary Public in and for the State of Washington, residing at Seattle, in the above-named county and state, duly commissioned, sworn and qualified, do hereby certify that on this 2d day of June, A. D. 1904, before me personally appeared _____Smith, to me known to be the individual who as president of the North Alaska Steamship Company, the corporation that executed the within instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the said corporation for the uses and purposes therein mentioned, and on oath stated he is authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

Given under my hand and official seal this 2d day of June, A. D. 1904.

_____,
Notary Public in and for the State of Washington,
Residing at Seattle, King County, said state.

Complainant's Exhibit No. 5.

(Sept. 29/05. Willis Van Valkenberg, Special Examiner.)

(On Blank of Western Union Telegraph Co.)

July 15, 1904.

Frank Waterhouse, Seattle, Washington.

Have you advices of collection of trustee freight money. Just returned yesterday. Please write present status of our joint claim.

FRANK S. PUSEY.

Copy.

Complainant's Exhibit No. 6.

(Sept. 29/05. Willis Van Valkenberg, Special Examiner.)

No. 1 Broadway, New York. July 27, 1904.

Mr. Frank Waterhouse, Seattle, Washington.

Dear Sir: Some two weeks ago I wired you to learn if freight money had been collected, and to write me present status of affairs, to which I have no reply. Not hearing from you, I learned through Mr. King that have disposed of the S. S. Garonne to an new company. If you have taken care of my claim of \$10,000, under your agreement to act in good

faith in acting as Trustee, it will relieve my mind very much to hear from you to that effect.

Very truly,

F. S. PUSEY,

Trustee.

Complainant's Exhibit No. 7.

(Sept. 29/05. Willis Van Valkenberg, Special Examiner.)

STATE OF NEW YORK.

OFFICE OF THE SECRETARY OF STATE.

Albany, Apr. 15, 1905.

Taft & Sherman, 15 William St., N. Y. City.

Dear Sir: Your letter of the 13 inst. is received. In reply thereto I respectfully state that a certificate of incorporation was filed in this office on the 12 day of July, 1904, of a company under the corporate name of Merchants and Miners Steamship Co. of New York.

A certified copy of said certificate can be furnished upon receipt of \$——.

Yours respectfully,

Incorporators A. J. Baldwin, F. M. Van Wagoner,
E. W. Ulman, F. A. Clary.

JOHN F. O'BRIEN,

Secretary of State.

For Identification, Defendant's Exhibit "A."

(Willis Van Valkenberg, Special Examiner.)

Seattle, Washington,

June 2d, 1904.

I so hereby agree to hold out and deposit Five Thousand Dollars (\$5,000.00) of the freight money collected from first voyage of S. S. Garonne upon its arrival at Nome, Alaska, with the Bank of Nome to the credit of Seattle Nat'l. Bank for use of Frank Waterhouse & Co. Inc., Trustee.

CHARLES B. SMITH.

*United States Circuit Court, Western District of
Washington, Northern Division.*

No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & COMPANY Inc., (a
Corporation), and FRANK WATER-
HOUSE,

Respondents.

Memorandum Decision on the Merits.

(Filed May 14, 1907.)

I am unable to find in the pleadings and evidence in this case any legal or equitable grounds for holding the defendant Frank Waterhouse as an individual liable to the complainant, and I therefore direct that as to him the case be dismissed with costs.

The other defendant, Frank Waterhouse & Co., Incorporated, will hereafter be referred to as the defendant, as if it were the sole defendant in the case. It was formerly the owner of the steamship Garonne, and in the year 1904 it contracted to sell said steamship to the North Alaska Steamship Company, another corporation, which appears to have been organized without any capital other than the hopes of its promoters. In the month of June, 1904, the purchaser owed the defendant \$37,671.46 on account of the purchase price of the steamer, and owed the complainant \$10,000.00 for borrowed money, and also other creditors a considerable amount for repairs and betterments made to the steamer, and supplies for an intended voyage from Seattle to Nome.

On June 2, 1904, in order to arrange for the payment of the steamship company's debts to the defendant and to the complainant, and to clear the ship so she could proceed immediately on her intended voyage, the three parties, represented respectively by

Frank S. Pusey, agent for the complainant, Frank Waterhouse, President of the defendant, and Charles B. Smith, President of the Steamship Company, held a conference at Seattle, which culminated in the execution and delivery of a memorandum agreement, a promissory note and an assignment of freight money, which several documents are of the following tenor:

“Memorandum between Frank S. Pusey, agent for G. M. Dodge, of New York, and Frank Waterhouse & Co. Inc., of Seattle, Washington.

The North Alaska Steamship Company is indebted to said Waterhouse & Co., Inc., in the sum of about \$37,671.46 being balance due on purchase price of the Steamship “Garonne,” and are also indebted to said G. M. Dodge in the sum of about ten thousand dollars for borrowed money.

It is agreed that said Waterhouse & Co., Inc., shall take a mortgage from said North Alaska Steamship Co. upon the steamship “Garonne” to secure both claims above mentioned. The claim of said Waterhouse & Co., Inc., shall be prior and paramount under such mortgage, and the claim of said Dodge shall be secondary. Said Waterhouse & Co., Inc., shall take a note from said North Alaska Steamship Co., payable to them as Trustee, for the amount so owing to said Dodge, said note to be payable in two months from date:

It is agreed that said Waterhouse & Co., Inc., in acting as such Trustee for said Dodge in the securing of said indebtedness, assumes no liability whatever with reference thereto, except that it agrees to act in good faith.

FRANK S. PUSEY, Agent,
For G. M. DODGE.
FRANK WATERHOUSE & CO., Inc.,
By FRANK WATERHOUSE,
President.

\$10,000.00

Seattle, Wash., June 2d, 1904.

On or before two months after date we promise to pay to the order of Frank Waterhouse & Co., Inc., as Trustee the sum of Ten Thousand & 00/100 Dollars, with interest at the rate of seven per cent. per annum from date, negotiable and payable at the Seattle National Bank, Seattle, Wash. If suit is brought on this note or it becomes advisable to place the same in the hands of an attorney for collection, we agree to pay an additional sum equal to five per cent., upon the amount of this note as attorney's fees.

NORTH ALASKA STEAMSHIP CO.,
By CHARLES B. SMITH,
President.

Seattle, Washington,

June 2d, 1904.

I do hereby agree to hold out and deposit Five Thousand Dollars (\$5000.00) of the freight money collected from first voyage of S. S. Garonne upon its arrival at Nome, Alaska, with the Bank of Nome to the credit of Seattle Nat'l Bank for use of Frank Waterhouse & Co., Inc., Trustee.

CHARLES B. SMITH.

A mortgage of the steamship Garonne was also prepared and signed by Smith, as President of the Steamship Company, containing stipulations in conformity with the above memorandum, and upon these several documents this suit is founded.

The following quotations from the defendant's answer are proximately a true statement of the transaction and the controlling circumstances which influenced the parties:

“That on June 2d, 1904, there was a balance due respondent company on said purchase price from said North Alaska Steamship Company of \$37,671.46; that said steamer was loaded with cargo and passengers ready to start on her voyage to Nome, Alaska; that the representative of said North Alaska Steamship Company reported to respondent company that there were claims unpaid against said steamer for repairs and supplies amounting to approximately thirteen thousand dollars (\$13,000.00). That said North Alaska Steamship Company had failed to furnish a guarantee bond guaranteeing said vessel would be kept free of liens and they had failed to furnish

the collateral security for said deferred payments according to the terms of their contract, and stated to respondent that they were unable to furnish such security; and respondent company had notified them that said vessel would not be permitted to sail under their charge until said contract was complied with in full. That on or about June 1st, 1904, one Charles B. Smith, President of said North Alaska Steamship Company, arrived in Seattle from New York expecting to go to Nome, Alaska, on said steamer, and one Frank S. Pusey representing himself as the agent of said complainant, also arrived in Seattle about the same date. That said Smith represented to respondents that his company was prepared to pay off all of the claims against said vessel incurred by repairs and supplies as soon as he could notify the New York office of the amount due therefor; and that they were prepared to pay the balance due respondent company in the purchase price within the next twenty days; and in view of said representations and relying thereon, this respondent company consented to permit said steamer to make said voyage in charge of said North Alaska Steamship Company; that said Smith and said Pusey agree that said North Alaska Steamship Company was indebted to said complainant, in the sum of ten thousand dollars (\$10,000.00), and said Smith, on behalf of his said company, offered to take a bill of sale to said steamer and to execute a mortgage thereon for the balance

due respondent company, payable in twenty (20) and forty (40) days from that date, and to give a second mortgage to said complainant to secure the ten thousand dollars (\$10,000.00) due him, payable in sixty (60) days from that date; said bill of sale and mortgages to be executed by said company as soon as the money was received by respondent company with which to pay the claims for labor and supplies against said steamer; that said Smith also agreed with said Pusey to assign to him, and on behalf of said North Alaska Steamship Company did assign to said Pusey certain freight due on cargo then being shipped by said steamer to Nome, which was payable on delivery of the cargo at Nome, and said Pusey appointed said Smith as agent to collect said freights and remit them to the Seattle National Bank for the credit of said complainant. That as a matter of convenience it was agreed between the said Pusey and the said respondent company that one mortgage would be taken on said vessel securing both claims due said respondent company and due said complainant, said mortgage providing for priority in favor if the debt due respondent company; that said Pusey stated to respondents that he did not wish to remain in Seattle for the length of time necessary to get said mortgage executed by said North Alaska Steamship Company, and requested respondent company to act for him in receiving such money as might

be remitted by said Smith to said Seattle National Bank for the credit of complainant, and in the acceptance and recording of said mortgage; and the respondent company as a matter of accommodation to said Pusey consented to do so; and the memorandum set forth in the sixth paragraph of said bill of complaint was executed to evidence said arrangement.

Respondent further shows that it was agreed that the note to said complainant should be executed by said North Alaska Steamship Company payable to this respondent as trustee for said complainant in order that the same might be deposited in the Seattle National Bank and any remittances received by said bank from said Smith could be credited thereon. * * *

Respondent states that in the transactions and conversations with said Pusey leading up to said final arrangement, the said Pusey was distinctly informed of the rights of this respondent and the conditions as they existed at that time between it and said North Alaska Steamship Company. * * * Respondents state that said North Alaska Steamship Company was a New York corporation, and had its main office and corporate seal in the State of New York, and that all of its officers except the said Charles B. Smith, who was president, were then in New York. That respondent company caused to be

prepared a bill of sale of said steamer from respondent company to said North Alaska Steamship Company, and also caused to be prepared a mortgage from said North Alaska Steamship Company to respondent company upon said steamer, with appropriate conditions and provisions to secure the debt due this respondent company, and also that due complainant in accordance with the terms agreed on. That said mortgage was submitted to said Pusey and declared by him to be satisfactory in form; that thereupon respondent company procured said Charles B. Smith, president of said North Alaska Steamship Company, to sign said mortgage for and on behalf of said company, and also to execute the notes upon behalf of said company. * * * That accordingly this respondent company, on June 3d, 1904, enclosed said bill of sale and said mortgage to the Chase National Bank of New York, with directions to said bank to deliver said bill of sale to said North Alaska Steamship Company upon the proper execution of said mortgage by that company, and on the same day respondent company notified J. B. Leake, the secretary of said company, and also the Occidental Security Company, the financial agent of said company in New York, of the forwarding of said papers, and requested prompt execution thereof. That said North Alaska Steamship Company failed and refused to execute said mortgage and refused to pay

the claims incurred by it against said steamship company for repairs and supplies. * * * Respondents state in answer to the allegations contained in the ninth paragraph of said bill of complaint that said steamship "Garonne," on June 2d, 1904, was in first-class condition, and respondent believes that she was thoroughly seaworthy, and they state that the overhauling and repairs made thereon by said North Alaska Steamship Company were charged and done on the credit of this steamer."

The North Alaska Steamship Company having failed to meet its obligations for repairs, etc., the defendant corporation disregarding the arrangement made at Seattle with the complainant's representative served a written notice upon the officers of the North Alaska Steamship Company in New York, which reads as follows:

"New York, July 8th, 1904.

North Alaska Steamship Company,

Gentlemen: By the terms of our conditional contract of sale of the steamship 'Garonne' to you it was provided that deferred payments should be evidenced by notes of your company and secured by a first mortgage on the steamer and by such additional collateral security as should be satisfactory to us. It was also further provided that your company should give us a guaranty company's bond, protecting us and the steamer from any lien or

claims for supplies or repairs that might be incurred by you at any time before the payment of our debt in full. It was also provided in said agreement that these securities and bonds were to be furnished to us on or before the tenth day of March, 1904. None of these conditions have been complied with by you.

There is now a balance due us of \$37,641.00, with interest since June 2d, 1904, and there are claims and demands outstanding against the steamer, incurred by you in the purchase of supplies and material and for repairs, amounting to something over \$30,000, which are unpaid and for which the holders claim a lien against the steamer.

We now notify you that unless you are prepared to and will at once complete the performance of your contract by accepting title to the steamer, executing a mortgage and notes for the deferred payments, furnish the bond from the Guaranty Company, indemnifying us against any claims against the steamer, and furnish the additional collateral security for preferred payments due us, that security to be to our satisfaction, we will exercise the right reserved to us under the contract of cancelling your option of purchasing the said steamer and declare a forfeiture of any rights you would otherwise have in said contract, and also will retain the payments heretofore made to us thereon.

We are now, and have been since the tenth day of March, last, ready and prepared to execute a bill of sale to you of the steamer upon your compliance with the terms of said contract, but we are not willing to allow the matter to stand open in its present shape, and we require that you either perform the contract or submit to a forfeiture of your rights under it at once.

Yours truly,

FRANK WATERHOUSE & CO.”

The response was a notice that said steamship company was unable to comply with the terms of said demand, and that it abandoned the contract to purchase the steamship, and thereupon the president of the defendant corporation entered into the following written contract with Wm. F. King, who had been a financial backer of the steamship company:

“Memorandum of Agreement made this 9th day of July, 1904, between Wm. F. King, of New York City, party of the first part, and Frank Waterhouse, of Seattle, Washington, party of the second part.

For and in consideration of the mutual covenants and agreements hereinafter expressed, the said parties mutually agree as follows:

First, The said Wm. F. King, acting for both parties, will at once organize a corporation under the

laws of the State of New York, to be known as the Merchants' and Miners' Steamship Company of New York, with a capital stock of one hundred thousand dollars (\$100,000.00), such corporation to have all the powers usual and common to transportation companies. The Board of Directors shall be composed of five members, and the board for the first year shall consist of the following persons: William F. King, Wm. R. Corwine and S. Cristy Mead, of the City of New York, and Frank Waterhouse and W. H. Bogle, of the city of Seattle. For the first year the president shall be Frank Waterhouse, the vice-president W. H. Bogle, and the secretary S. C. Mead. The said Wm. F. King is to receive fifty thousand dollars par value of the capital stock, and the said Frank Waterhouse is to receive the other fifty thousand dollars par value of the capital stock.

Second. Upon the formation of said corporation, said Waterhouse will have Frank Waterhouse & Co., Inc., execute a bill of sale conveying to said new company the steamship "Garonne," with her equipment, supplies and material on board, and also turn into the treasury of said company the cash in the hands of Frank Waterhouse & Co., Inc., received from the last voyage of the "Garonne."

Third. The said Wm. F. King will advance to said new company the sum of thirty thousand dol-

lars (\$30,000.00) in cash, to be applied in the payment and discharge of the claims now existing against the steamship for supplies, material, repairs, etc., said money to be deposited by said King in the Chase National Bank, New York, to the credit of Frank Waterhouse, fifteen thousand dollars (\$15,000.00) thereof, on or before July 16th, 1904, and the remaining fifteen thousand dollars (\$15,000.00) on or before July 23d, 1904.

Fourth. Said new company shall execute a mortgage securing to said Wm. F. King the said sum of thirty thousand dollars (\$30,000.00), and to said Frank Waterhouse & Co., Inc., the sum of thirty-seven thousand dollars, with interest on said amounts from July 15th, 1904. Said mortgage to contain the usual covenants and agreements contained in such instruments, but to provide specifically against any personal liability or stock liability of either of the parties hereto for any part of the indebtedness expressed in said mortgage. Said indebtedness to be represented by notes given by said mortgagor company to said respective parties as above, and each of the notes to be of equal rank under the mortgage, and to be payable at such time or times as said parties hereto may hereafter agree, and to bear interest at the rate of 6% per annum.

Fifth. Said Waterhouse shall advance to said new company such amount as may be needed for the

operation of the steamer during the present season.

Executed in duplicate the date above named.

WM. F. KING.

FRANK WATERHOUSE."

The scheme outlined in this agreement was subsequently carried through to completion, and on the same day that said agreement was entered into, the defendant executed a release to the North Alaska Steamship Company, forever discharging it "of all and from all, and all manner of action and actions, cause and causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, expense, executions, claims, or demands whatsoever in law or in equity, which against the North Alaska Steamship Company, its successors and assigns, ever had, now has, or which its successors and assigns hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents." A similar release was given to the defendant by the steamship company, and the defendant also agreed to relinquish the freight money assigned by Smith, the president of the steamship company to the defendant as trustee for the complainant. The exchange of releases and relinquishment are proved by the testimony of Mr. Bo-

gle given in behalf of the defendant and by a copy of the release executed by the defendant, which was introduced in connection with his testimony as "Defendant's Exhibit Q-3."

These transactions were carried through to completion at the city of New York without any notice being given to the complainant. In its answer and in the evidence introduced in behalf of the defendant there is an attempt to excuse its failure of duty in this regard on the ground that its officers did not know the address or whereabouts of the complainant. From the testimony of Waterhouse and Bogle it appears that the only efforts made to communicate with the complainant were confined to inquiries directed to persons connected with the steamship company, whose interests would not have been advanced by affording him a fair opportunity to see to the enforcement of his rights in connection with the adjustment made between the two corporations. This shows inexcusable negligence on the part of a trustee. The evidence proves that the complainant is and has been for many years a man of national reputation and at the time of the transactions he had an office in New York City, which he visited frequently and when absent therefrom, he was but a short distance from New York City, and was in constant communication with his office. I have no doubt that any ten year old boy of ordinary intel-

ligence, if dispatched with a message, could have readily delivered it to the complainant in person, and that Mr. Frank Waterhouse, if he had made a bona fide effort to do so, could have communicated with the complainant by mail, telegraph or telephone, or personally.

It is the contention of the complainant that the steamship "Garonne" in the year 1904 was of sufficient value to constitute ample security for the entire indebtedness of the North Alaska Steamship Company, including the unpaid purchase money, the debts contracted for repairs, improvements and supplies, and the debt due to him, and that the disposition made of the ship without collecting said debt constitutes a breach of trust rendering the defendant corporation liable to him for the entire amount of said debt. The defense appears to rest upon a theory, that the North Alaska Steamship Company acquired no interest in the ship other than an option to purchase, and that the defendant corporation incurred no liability to the complainant, except to hand over any amount of money which might be voluntarily paid by the steamship company under the contract of June 2d, 1904. In this it is assumed that the steamship company was not a party to that contract, and was not obligated to mortgage the steamship to secure the money due to the complainant. I hold, however, that the mort-

gage which was signed by the president of the steamship company, the promissory note for ten thousand dollars, given to the defendant as trustee for the complainant, the assignment of freight money, and the contract signed by the defendant and Pusey as agent for the complainant, constitute one contract, binding upon all three of the parties. The documentary evidence in the case proves that notice of the transaction was promptly sent to the Secretary of the steamship company in New York, and that Smith's authority as president of the company was not disputed. The evidence also proves that there was more than a mere executory contract to sell the steamship to the North Alaska Steamship Company, because the sale was consummated by complete manual delivery of the ship to the purchaser, and she was permitted to leave the port of Seattle under the control of the purchaser in consideration of said contract, and that she earned money for the purchaser; therefore, the defendant, held the legal title, subject to the trust created by said contract, and except as against other creditors and bona fide purchasers the ship was effectually and legally hypothecated for the complainant's debt.

The evidence proves that the "Garonne" was surrendered to the defendant in good condition, and that she was then worth more than the amount of the complainant's debt over and above all other

claims against her. The defendant was then in the same situation, practically, that it would have been if the mortgage had been executed and foreclosed and the ship sold to the defendant for the amount of the debts secured by the mortgage, and the manner in which she was disposed of by the defendant without notice to the complainant was incompatible with the good faith, to which the defendant as trustee for the complainant became pledged by its agreement with Pusey. The evidence also proves that the release given by the defendant while it was the holder of the ten thousand dollar note, included the debt evidenced by that note and discharged the North Alaska Steamship Company, from its indebtedness to the complainant, to the extent of the power of a trustee, under the circumstances, and by discharging the steamship company in that manner and disposing of the security without the complainant's consent, the defendant, by the principles of equity, must be held to have assumed an obligation to pay the note.

In the argument in behalf of the defendant it was contended that the North Alaska Steamship Company should have been joined as a necessary party to the suit, and that because of a defect of parties the Court cannot render a decree, other than a decree of dismissal. If it were true that the steamship company is a necessary party, the Court would be obliged to dismiss the suit, notwithstanding the fail-

ure of the defendant to set forth this ground of objection to the bill of complaint, by demurrer, plea or answer. The defendant, however, by the introduction of the release in evidence has proved affirmatively that the steamship company is not a necessary, nor a proper party, it has no interest to be affected by the litigation, because the release is an estoppel against any reclamation by the defendant against it.

I direct that a decree be entered in favor of the complainant for the amount of the principal and interest of the promissory note, and the amount specified in the note for attorney's fee.

C. H. HANFORD,

Judge.

[Endorsed]: Mem. Decision on the Merits. Filed May 14, 1907. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the Circuit Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Inc., and
FRANK WATERHOUSE,

Respondents.

Final Decree.

This cause coming on to be further heard at this term, and after argument by counsel, and the Court being fully advised in the premises; wherefore, upon consideration thereof it is hereby ordered, adjudged and decreed as follows, viz.:

1st. That this action is, and the same hereby is dismissed as to the respondent, Frank Waterhouse, and that said Frank Waterhouse do have and recover of and from the complainant his costs in this action hereby allowed by this Court as follows: A docket fee of twenty dollars (\$20.00) and twenty-five (25) per cent of the aggregate amount of the costs of complainant and respondent, Frank Water-

house & Co., Inc. (less said \$20 docket fee), as taxed and allowed by the clerk of this Court.

2d. That said complainant, Grenville M. Dodge, do have and recover of and from the respondent, Frank Waterhouse & Co., Incorporated, the sum of ten thousand dollars (\$10,000.00), together with interest thereon at the rate of seven per cent per annum from June 2, 1904, to date of this decree amounting in the aggregate to the sum of twelve thousand and seventy-six and 67/100 dollars (\$12,076.67), also five (5) per cent of the amount of said principal and interest, as an attorney's fee, amounting to the further sum of six hundred and three and 80/100 dollars (\$603.80); and said complainant's costs and disbursements herein incurred, as taxed and allowed by the clerk of this court, amounting to the further sum of (\$285.73) dollars.

3d. That upon application of said complainant, or his solicitor, execution issue out of this Court, and under the seal thereof, against said respondent, Frank Waterhouse & Co., Incorporated, for the amount of this decree, including attorney's fee and costs, as aforesaid.

Done in open court, this 20th day of May, 1907.

C. H. HANFORD,

Judge.

[Endorsed]: Final Decree. Filed in the U. S. Circuit Court, Western Dist of Washington. May 20,

1907. A. Reeves Ayres, Clerk. R. M. Hopkins,
Dep.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

IN EQUITY—No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Inc., and FRANK
WATERHOUSE,

Respondents.

Supersedeas and Appeal Bond.

Know all men by these presents, that we, Frank Waterhouse & Company, Incorporated, as principals, and National Surety Company, a corporation organized under the laws of the State of New York, as surety, are held and firmly bound unto the above-named Grenville M. Dodge, for the payment of which, well and truly to be made, we bind ourselves and each of us, and our and each of our successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 1st day of June, 1907.

Whereas, the above-named Frank Waterhouse & Company, Incorporated, has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the final decree rendered in the above-entitled suit by the Judge of the Circuit Court of the United States for the Western District of Washington;

Now, therefore, the condition of this obligation is such that if the above-named Frank Waterhouse & Company, Incorporated, shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

FRANK WATERHOUSE & COMPANY,
Inc.

By W. P. PRICHARD, [Seal]
Secretary.

NATIONAL SURETY COMPANY.

By JOHN W. ROBERTS,
Resident Vice-president
Attest: GEO. W. ALLEN,
Resident Assistant Secretary.

Approved June 6th, 1907.

C. H. HANFORD,
Judge.

[Endorsed]: Supersedeas and Appeal Bond.
Filed in the U. S. Circuit Court, Western Dist. of

Washington. June 6, 1907. A. Reeves Ayres,
Clerk. A. N. Moore, Deputy.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

IN EQUITY—No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Inc., and FRANK
WATERHOUSE,

Respondents.

Petition for Appeal.

The above-named respondent, Frank Waterhouse & Co., Inc., conceiving itself aggrieved by the final decree entered on the 21st day of May, 1907, in the above-entitled cause, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that this appeal may be allowed, that the amount of the supersedeas bond to be executed by said respondent on such appeal may be fixed by the Court, and that a transcript of the records, proceedings and papers in said cause, duly authenticated, may be sent to the

United States Circuit Court of Appeals for the Ninth Circuit.

BOGLE, HARDIN & SPOONER,
Solicitor for Respondent, Frank Waterhouse & Co.,
Inc.

[Endorsed]: Appeal. Filed in the U. S. Circuit Court, Western Dist. of Washington. June 6, 1907. A. Reeves Ayres, Clerk. A. N. Moore, Deputy.

In the Circuit Court of the United States for the Western District of Washington, Northern Division.

IN EQUITY—No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Inc., and FRANK
WATERHOUSE,

Respondents.

Order Allowing Appeal.

It is ordered that the appeal of Frank Waterhouse & Co., Inc., from the final decree entered in this cause on the 21st day of May, 1907, be allowed as prayed for, and that the amount of the supersedeas bond to be executed by such appellant to

supersede said decree pending said appeal be, and the same is hereby, fixed at the sum of fifteen thousand (\$15,000) dollars.

C. H. HANFORD,
Judge.

[Endorsed]: Order. Filed in the U. S. Circuit Court, Western Dist. of Washington. June 6, 1907. A. Reeves Ayres, Clerk. A. N. Moore, Deputy.

In the United States Circuit Court of Appeals, Ninth Circuit.

FRANK WATERHOUSE & CO., Inc.,
Appellant,

vs.

GRENVILLE M. DODGE,
Complainant and Appellee.
FRANK WATERHOUSE,
Defendant.

Assignment of Errors.

Comes now Frank Waterhouse & Co., Inc., by Bogle, Hardin & Spooner, its solicitors, and says that in the record and proceedings in the above-entitled cause there is manifest error in this, to wit:

I.

The suit is brought to charge this appellant, as trustee, with an indebtedness alleged to be owing

by the North Alaska Steamship Company to the complainant and appellee, Grenville M. Dodge. In such proceedings the debtor, North Alaska Steamship Company, was an indispensable party, and the Court below erred in entertaining jurisdiction of such cause in the absence of the North Alaska Steamship Company from the record.

II.

The Court below erred in rendering a decree in favor of the appellee, Grenville M. Dodge, and against this appellant for the sum of twelve thousand and seventy-six and sixty-seven hundredths (\$12,076.76) dollars, and for the further sum of six hundred and three and eighty hundredths (\$603.80) dollars as attorney's fee, together with interest and costs.

III.

The Court erred in rendering any decree in favor of complainant below and against this appellant, and in refusing to enter a decree in favor of this appellant dismissing said action.

IV.

And for other errors manifest upon the record.

Wherefore, the said Frank Waterhouse & Co., Inc., prays that the decree of the said Circuit Court of the United States for the Western District of Washington, Northern Division, be reversed, and

that proper decree be rendered herein dismissing said action as to this appellant.

W. H. BOGLE,

THOMAS B. HARDIN,

CHAS. P. SPOONER,

Solicitors for Appellant, 377 Colman Building,
Seattle, Wash.

[Endorsed]: Assignment of Errors. Filed in the U. S. Circuit Court, Western District of Washington. June 6, 1907. A. Reeves Ayres, Clerk. A. N. Moore, Deputy.

Citation (Copy).

UNITED STATES OF AMERICA.

To Grenville M. Dodge, Complainant, and Frank Waterhouse, Defendant, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco within thirty days from this date, pursuant to an appeal filed in the clerk's office of the Circuit Court of the United States for the Western District of Washington, Northern Division, wherein Grenville M. Dodge is complainant and appellee, and Frank Waterhouse is defendant and appellee, and Frank Waterhouse & Co., Inc., is appellant, to show cause, if any there be, why the final decree in

said cause should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable WILLIAM B. GILBERT, Circuit Judge of the United States, this 6th day of June, in the year of our Lord one thousand nine hundred and seven.

[Seal]

C. H. HANFORD,
Judge.

Due and personal service of the within citation, by certified copy admitted this 6th day of June, 1907.

GEO. H. KING,
Solicitor for Complainant.

[Endorsed]: Citation. Filed in the U. S. Circuit Court, Western Dist. of Washington. June 6, 1907. A. Reeves Ayres, Clerk. A. N. Moore, Deputy.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Division.*

IN EQUITY—No. 1290.

GRENVILLE M. DODGE,

Complainant,

vs.

FRANK WATERHOUSE & CO., Inc., and FRANK
WATERHOUSE,

Respondents.

Praeceptum for Transcript.

To the Clerk of the Above-entitled Court:

You will please prepare and properly certify a transcript of the record in this cause and insert therein the following, for use on appeal:

Bill of complaint, filed April 26, 1905.

Answer, filed May 3, 1905.

Exceptions to answer, filed May 26, 1905.

Order overruling exceptions to answer, filed May 29, 1905.

Memo. decision, filed July 6, 1905.

Order overruling exceptions to answer, filed July 12, 1905.

Replication, filed August 2, 1905.

Deposition of Frank S. Pusey, published June 21, 1906.

Testimony, filed June 16, 1906.

Complainants' Exhibits 8 to 17, 19, 20, 21, 22, 23, 24, 25 and 26, and Respondents' 95 exhibits, filed June 16, 1906.

Deposition of Grenville M. Dodge and Frank S. Pusey, published June 16, 1906.

Memo. decision on merits, filed May 14, 1907.

Final decree, filed May 20, 1907.

Supersedeas and appeal bond, filed June 6, 1907.

Petition for appeal, filed June 6, 1907.

Order allowing appeal, filed June 6, 1907.

Assignment of errors, filed June 6, 1907.

Citation, filed June 6, 1907.

Dated June 17, 1907.

BOGLE, HARDIN & SPOONER,
Attorneys for Respondents.

[Endorsed]: Praecipe. Filed in the U. S. Circuit Court, Western Dist. of Washington. June 17, 1907. A. Reeves Ayres, Clerk. W. D. Covington, Dep.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Division.*

No. 1290.

FRANK WATERHOUSE & CO., Inc.,
Appellant,

vs.

GRENVILLE M. DODGE,
Complainant and Appellee.
FRANK WATERHOUSE,
Defendant.

Clerk's Certificate to Transcript.

United States of America,
Western District of Washington,—ss.

I, A. Reeves Ayres, Clerk of the Circuit Court of the United States for the Western District of Wash-

ington, do hereby certify the foregoing four hundred and forty (440) typewritten pages, numbered from one to 440 inclusive, to be full, true and correct copy of the record and proceedings in the above and foregoing entitled cause as the same remain of record and on file in the office of the clerk of said court, as, by the praecipe of the solicitor for the appellant I am required to certify and transmit as the record on appeal to the Circuit Court of Appeals for the Ninth Circuit, from the order and decree of the Circuit Court of the United States for the Western District of Washington, in said appeal mentioned.

I further certify that the cost of preparing the foregoing record on appeal is the sum of \$340.60, and that said sum has been paid to me by Bogle, Hardin & Spooner, solicitors for appellant.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this 26th day of July, 1907.

[Seal]

A. REEVES AYRES,

Clerk.

By R. M. Hopkins,

Deputy Clerk.

Citation (Original).

UNITED STATES OF AMERICA:

To Grenville M. Dodge, Complainant, and Frank Waterhouse, Defendant, Greeting :

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco within thirty days from this date, pursuant to an appeal filed in the clerk's office of the Circuit Court of the United States for the Western District of Washington, Northern Division, wherein Grenville M. Dodge is complainant and appellee, and Frank Waterhouse is defendant and appellee, and Frank Waterhouse & Co., Inc., is appellant, to show cause, if any there be, why the final decree in said cause should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable WILLIAM B. GILBERT, Circuit Judge of the United States, this 6th day of June, in the year of our Lord one thousand nine hundred and seven.

[Seal]

C. H. HANFORD,
Judge.

Due and personal service of the within citation, by certified copy, admitted this 6th day of June, 1907.

GEO. H. KING,
Solicitor for Complainant.

[Endorsed]: No. 1290. Circuit Court of the United States for Western District of Washington, Northern Division. In Equity. Grenville M. Doge, Complainant, vs. Frank Waterhouse & Co., Inc., et al., Respondents. Citation. Filed in the U. S. Circuit Court, Western Dist. of Washington. Jun. 6, 1907. A. Reeves Ayres, Clerk. A. N. Moore, Dep. Bogle, Hardin & Spooner, Attorneys for Respondents.

[Endorsed]: No. 1490. United States Circuit Court of Appeals for the Ninth Circuit. Frank Waterhouse & Co., Inc., Appellants, vs. Grenville M. Dodge and Frank Waterhouse, Appellees. Transcript of Record. Upon Appeal from the United States Circuit Court for the Western District of Washington, Northern Division.

Filed August 12, 1907.

F. D. MONCKTON,
Clerk.

